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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1947**

**No. 49**

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**WILLIAM SHAPIRO, PETITIONER,**

**vs.**

**THE UNITED STATES OF AMERICA**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT**

---

**PETITION FOR CERTIORARI FILED MARCH 5, 1947.**

**CERTIORARI GRANTED JUNE 3, 1947.**



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 49

WILLIAM SHAPIRO, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1]

**IN UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**UNITED STATES OF AMERICA,**

**AGAINST**

**WILLIAM SHAPIRO, Defendant-Appellant**

**STATEMENT UNDER RULE 13**

This cause was commenced by the filing by the United States Attorney for the Southern District of New York, of an information containing forty-eight (48) separate counts against the defendant, William Shapiro, on December 20th, 1944. The defendant pleaded not guilty on January 11th, 1945. The defendant was not arrested nor was bail taken. The defendant was first tried before Hon. J. Waties Waring, District Judge, and a jury on September 11th, 12th, 13th and 14th, 1945, resulting, at the end of the presentation of the Government's case, in a dismissal of counts 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38 and 45 of the information on the motion of the Government, and in the dismissal of counts 4, 5, 6 and 47 of the information on the motion of the defendant, thus eliminating thirty (30) counts from the information and leaving eighteen (18) counts undisposed of. As to these counts, a mistrial resulted.

The defendant was tried again on the remaining eighteen (18) counts of the information before Hon. H. Church Ford, [fol. 2] District Judge, and a jury, on December 14th, 1945. The trial resulted in a dismissal of count 48 of the information on the motion of the Government, and counts 2, 36, 37, 39, 40 and 41 of the information on the motion of the defendant. Counts 1, 3, 7, 8, 9, 10, 11, 42, 43, 44 and 46 were given by the Court to the jury. The jury returned a verdict of not guilty as to counts 1, 3, 42, 43, 44 and 46 and a verdict of guilty against the defendant on counts 7, 8, 9, 10 and 11 of the information. Sentence was imposed and judgment was entered on Dec. 18, 1945. A motion for arrest of judgment and for a new trial was made on Dec. 19, 1945, and an order denying the defendant's motion for arrest of judgment and for a new trial was entered on January

2nd, 1946. Notice of Appeal on behalf of the defendant was filed on January 4th, 1946. There has been no change of parties herein.

[fol. 3] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

INFORMATION

Now comes John F. X. McGohey, United States Attorney for the Southern District of New York, leave having first been had and obtained, and respectfully informs this Court:

That heretofore, to wit, on or about the 20th day of November, 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, of 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Murray Silverman of 15 crates of lettuce, and 5 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426, duly issued by the Price Administrator, unlawfully, wilfully, and knowingly, evaded the provisions of the said Revised Maximum Price Regulation No. 426, by demanding, making, and requiring the said Murray Silverman to purchase a commodity, to wit, 25 crates of celery at \$4.50 per crate as a condition of the sale to him and as an integral part thereof of the aforesaid 15 crates of lettuce and 5 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50, Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder):

[fol. 4] Second Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 26th day of November 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New

York, the defendant herein, in connection with the sale by him on said date to Murray Silverman of 10 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said making and requiring the said Murray Silverman to purchase a commodity, to wit, 10 crates of celery at \$5.50 per crate as a condition of the sale to him and as an integral part thereof of the aforesaid 10 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50, Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Third Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 28th day of December 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale [fol. 5] by him on said date to J. Simensky & Co., of 5 boxes of apples and 5 boxes of grapes, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said J. Simensky & Co., to purchase a commodity, to wit, 5 crates of beets at \$2.50 per crate, and 5 crates of lettuce at \$5.29 per crate, as a condition of the sale to them and as an integral part thereof of the aforesaid 5 boxes of apples and 5 boxes of grapes; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder):

#### Fourth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 30th day of November 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Far Rockaway Fruit Market, Inc., of 5 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Far Rockaway Fruit Market, Inc., to purchase a commodity, to wit, 10 bags of potatoes at \$4.15 per bag as a condition of the sale to them and as an integral part thereof of the aforesaid 5 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Fifth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 2nd day of November 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Far Rockaway Fruit Market, Inc., of 5 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Far Rockaway Fruit Market, Inc., to purchase a commodity, to wit 10 bags of potatoes at \$4.15 per

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bag as a condition of the sale to them and as an integral part thereof of the aforesaid 5 crates of carrots, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

[fol. 7]

#### Sixth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 8th day of December 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Far Rockaway Fruit Market, Inc., of 5 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Far Rockaway Fruit Market, Inc., to purchase a commodity, to wit, 8 crates of celery at \$5.00 per crate as a condition of the sale to them and as an integral part thereof of the aforesaid 5 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Seventh Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 20th day of August 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the

[fol. 8]

sale by him on said date to Ernest Davino of 10 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Ernest Davino to purchase a commodity, to wit, 10 bags of potatoes at \$4.50 per bag as a condition of the sale to him and as an integral part thereof of the aforesaid 10 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Eighth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 28th day of August 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Ernest Davino of 7 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Ernest Davino to purchase a commodity, to wit, 10 baskets of peas at \$3.50 per basket as a condition of the [fol. 9] sale to him and as an integral part thereof of the aforesaid 7 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

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Ninth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 30th day of August 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Ernest Davino of 2 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making, and requiring the said Ernest Davino to purchase a commodity, to wit, 7 baskets of peas at \$5.50 per basket as a condition of the sale to him and as an integral part thereof of the aforesaid 2 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

[fol. 10]

Tenth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 10th day of September 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Ernest Davino of 6 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Ernest Davino to purchase a commodity, to wit, 10 boxes of Persian melons at \$4.00 per box as a condition of the

sale to him and as an integral part thereof of the aforesaid 6 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Eleventh Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 19th day of November 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New [fol. 11] York, the defendant herein, in connection with the sale by him on said date to Ernest Davino of 5 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Ernest Davino to purchase a commodity, to wit, 10 crates of celery at \$4.00 per crate as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Twelfth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 21st day of September 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by them on said date to Irving Horowitz of 5 crates of lettuce, the price of which was regulated by Revised Max-

imum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Irving Horowitz to purchase a commodity, to wit, 15 [fol. 12] boxes of honeydew melons at \$4.25 per box as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Thirteenth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 5th day of October, 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Irving Horowitz of 5 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Irving Horowitz to purchase a commodity, to wit, 10 bags of Idaho Potatoes at \$4.40 per bag as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

[fol. 13]

## Fourteenth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 18th day of October 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Irving Horowitz of 6 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Irving Horowitz to purchase a commodity, to wit, 20 boxes of honeydew melons at \$3.00 per box as a condition of the sale to him and as an integral part thereof of the aforesaid 6 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

## Fifteenth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 1st day of November 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New [fol. 14] York, the defendant herein, in connection with the sale by him on said date to Irving Horowitz of 10 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Irving Horowitz to purchase a commodity, to wit, 5 baskets of sweet potatoes at \$3.50 per basket as

a condition of the sale to him and as an integral part thereof of the aforesaid 10 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Sixteenth Count

And the said United States Attorney in manner and form as aforesaid respectfully informs this Court:

That heretofore, to wit, on or about the 12th day of November, 1943, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Irving Horowitz, of 5 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Irving Horowitz to purchase a commodity, to wit, 5 crates of celery at \$4.30 per crate as a condition of the [fol. 15] sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Seventeenth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 2nd day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale

by him on said date to Yonkers Fruit Co. of 15 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Yonkers Fruit Co. to purchase commodities, to wit, 5 crates of carrots of \$5.15 per crate, 5 baskets of peas at \$4.63 per basket, and 5 baskets of sweet potatoes at \$2.50 per basket as a condition of the sale to them and as an integral part thereof of the aforesaid 15 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 [fol. 16] Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Eighteenth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 5th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having its principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Yonkers Fruit Co., of 25 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Yonkers Fruit Co. to purchase commodities, to wit, 10 baskets of peas at \$4.45 per basket, 5 baskets of sweet potatoes at \$2.50 per basket, and 10 boxes of Persian melons at \$5.09 per box as a condition of the sale to them and as an integral part thereof of the aforesaid 25 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

## Nineteenth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

[fol. 17] That heretofore, to wit, on or about the 6th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Yonkers Fruit Co., of 7 crates of lettuce and 7 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Yonkers Fruit Co. to purchase a commodity, to wit, 10 baskets of peas at \$4.63 per basket as a condition of the sale to them and as an integral part thereof of the aforesaid 7 crates of lettuce and 7 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the Rules, regulations and orders duly adopted and issued thereunder).

## Twentieth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 7th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Yonkers Fruit Co. of 5 crates [fol. 18] of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Yonkers Fruit Co. to purchase a commod-

ity, to wit, 10 baskets of peas at \$4.83 per basket as a condition of the sale to them and as an integral part thereof of the aforesaid 5 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Twenty-first Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 11th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Yonkers Fruit Co., of 7 crates of lettuce and 10 boxes of grapes, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Yonkers Fruit Co. to purchase a commodity, to wit, 25 baskets of sweet potatoes at \$3.00 per basket as a condition of the sale to them and [fol. 19] as an integral part thereof of the aforesaid 7 crates of lettuce and 10 boxes of grapes; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Twenty-second Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 12th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro having his principal place of business at 364 Washington

Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Yonkers Fruit Co. of 5 crates of lettuce and 5 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Yonkers Fruit Co. to purchase a commodity, to wit, 25 baskets of sweet potatoes at \$3.00 per basket as a condition of the sale to them and at an integral part thereof of the aforesaid 5 crates of lettuce and 5 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

[fol. 20]

#### Twenty-third Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 15th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Yonkers Fruit Co. of 20 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Yonkers Fruit Co. to purchase a commodity, to wit, 15 baskets of sweet potatoes at \$3.00 per basket as a condition of the sale to them and as an integral part thereof — the aforesaid 20 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Twenty-fourth Count


And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 14th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington [fol. 21] Street, in the City, State and Southern District of New York, the defendant herein, in connection with the sale by him on said date to Morris Hyman of 5 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Morris Hyman to purchase a commodity, to wit, 15 boxes of Persian melons at \$3.00 per box, as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Twenty-fifth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 15th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Morris Hyman of 3 crates of lettuce and 6 crates of carrots, the prices of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demand- [fol. 22] ing, making and requiring the said Morris Hyman to purchase a commodity, to wit, 15 boxes of Persian melons



at \$3.09 per box as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce and 6 crates of carrots, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50, Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Twenty-sixth Count

And the said United States Attorney in Manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 20th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Morris Hyman, of 5 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Morris Hyman to purchase commodities, to wit, 18 boxes of Persian melons at \$3.00 per box, and 4 baskets of sweet potatoes at \$2.75 per basket as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United [fol. 23] States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Twenty-seventh Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 14th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, hav-

ing his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to P. Hoffman of 5 crates of lettuce, the price of which was regulated by Revised Maximum Price regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said P. Hoffman to purchase a commodity, to wit, 15 boxes of Persian melons at \$3.19 per box as a condition of the sale to him and as an integral part thereof of the aforesaid 3 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Twenty-eighth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 15th day of September, 1944 at the Southern District of New York and [fol. 24] within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to P. Hoffman, of 5 crates of lettuce and 5 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said P. Hoffman to purchase a commodity, to wit, 15 boxes of Persian melons at \$3.09 per box as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce and 5 crates of earrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Twenty-ninth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 16th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to P. Hoffman of 7 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, [fol. 25] wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said P. Hoffman to purchase a commodity, to wit, 30 boxes of Persian melons at \$3.19 per box as a condition of sale to him and as an integral part thereof of the aforesaid 7 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901, *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Thirtieth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 20th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to P. Hoffman of 7 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said P. Hoffman to purchase a commodity, to wit, 30 boxes of Persian melons at \$3.05 per box as a condition of the sale to him and as an integral part thereof of the aforesaid 7 crates of lettuce;

against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section [fol. 26] 901 *et seq.*, United State Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Thirty-first Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 15th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Benjamin Horowitz of 15 crates of lettuce and 10 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Benjamin Horowitz to purchase commodities, to wit, 25 baskets of sweet potatoes at \$3 per basket and 35 boxes of Persian melons at \$3.00 per box as a condition of the sale to him and as an integral part thereof of the aforesaid 15 crates of lettuce and 10 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations, and orders duly adopted and issued thereunder).

### Thirty-second Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

[fol. 27] That heretofore, to wit, on or about the 29th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Benjamin Horowitz of 10 crates of

lettuce the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Benjamin Horowitz to purchase a commodity, to wit, 15 baskets of sweet potatoes at \$2.70 per basket as a condition of the sale to him and as an integral part thereof of the aforesaid 10 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Thirty-third Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 30th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Benjamin Horowitz of 5 crates of carrots, the price of which was regulated by Revised Maximum [fol. 28] Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Benjamin Horowitz to purchase a commodity, to wit, 5 baskets of sweet potatoes at \$2.70 per basket as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50, Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Thirty-fourth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 2nd day of October, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Benjamin Horowitz of 20 boxes of grapes, 5 crates of lettuce and 5 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Benjamin Horowitz to purchase commodities, to wit, 10 baskets of sweet potatoes at \$2.70 per basket and 20 bags of onions at \$2.60 per bag as a condition of the sale to him and as an integral part thereof of the aforesaid 20 [fol. 29] boxes of grapes, 5 crates of lettuce and 5 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Thirty-fifth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 4th day of October, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Benjamin Horowitz of 5 crates of lettuce the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Benjamin Horowitz to purchase a commodity, to

wit, 10 baskets of sweet potatoes at \$2.50 per basket as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

[fol. 30]

### Thirty-sixth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 28th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to S & I White of 10 crates of lettuce and 15 boxes of grapes, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said S & I White to purchase a commodity, to wit, 25 bags of onions at \$2.00 per bag as a condition of the sale to them and as an integral part thereof of the aforesaid 10 crates of lettuce and 15 boxes of grapes; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Thirty-seventh Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 4th day of October, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York,

[fol. 31] the defendant herein in connection with the sale by him on said date to S & I White of 10 crates of lettuce and 10 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said S & I White to purchase commodities, to wit, 15 baskets of sweet potatoes at \$2.71 per basket and 20 bags of onions at \$2.00 per bag as a condition of the sale to them and as an integral part thereof of the aforesaid 10 crates of lettuce and 10 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Thirty-eighth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 8th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Fred Previ of 5 crates of lettuce the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by de- [fol. 32] manding, making and requiring the said Fred Previ to purchase a commodity, to wit, 10 baskets of sweet potatoes at \$3.00 per basket as a condition of the sale to him and as an integral part thereof of the aforesaid 5 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Thirty-ninth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 25th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Martori & LaMont of 25 boxes of grapes and 10 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully- wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Martori & LaMont to purchase commodities, to wit, 20 boxes of Persian melons at \$3 per box and 20 boxes of Persian melons at \$3.28 per box as a condition of the sale to them and as an integral part thereof of the aforesaid 25 boxes of grapes and 10 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United [fol. 33] States Code, and the rules, regulations and orders duly adopted and issued thereunder).

### Fortieth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 25th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Martori and LaMont of 20 crates of lettuce the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully- wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Martori and LaMont to purchase a commodity, to

wit, 30 baskets of sweet potatoes at \$2.70 per basket as a condition of the sale to them and as an integral part thereof of the aforesaid 20 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Forty-first Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 29th day of September, 1944 at the Southern District of New York [fol. 34] and within the jurisdiction of this Court, William Shapiro having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Martori & LaMont of 40 crates of lettuce and 20 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Martori & LaMont to purchase commodities, to wit, 45 boxes of honeydew melons at \$3.25 per box, 45 bags of onions at \$3.00 per bag and 15 baskets of beans at \$3.50 per basket, as a condition of the sale to them and as an integral part thereof of the aforesaid 40 crates of lettuce and 20 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Forty-second Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 6th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro,

having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Schwartz Produce Co., of 5 crates of lettuce and 5 crates of carrots the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully, wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring said Schwartz Produce Co. to purchase commodities, to wit, 5 baskets of sweet potatoes at \$3.50 per basket, 13 boxes of Persian melons at \$3.00 per box and 6 baskets of peas at \$4.25 per basket as a condition of the sale to them and as an integral part thereof of the aforesaid 5 crates of lettuce and 5 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Forty-third Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 13th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Schwartz Produce Co. of 5 crates of lettuce and 5 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Schwartz Produce Co. to purchase commodities, to wit, 5 baskets of peas at \$4.65 per basket and 20 boxes of honeydew melons at \$3.00 per [fol. 36] box as a condition of the sale to them and as an integral part thereof of the aforesaid 5 crates of lettuce and 5 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute

of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

#### Forty-fourth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 15th day of September, 1944; at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Schwartz Produce Co. of 7 crates of lettuce and 5 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully willfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring said Schwartz Produce Co. to purchase commodities, to wit, 10 baskets of sweet potatoes at \$3 per basket and 5 boxes of Persian melons at \$3.09 per box as a condition of the sale to them and as an integral part thereof of the aforesaid 7 crates of lettuce and 5 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

[fol. 37]

#### Forty-fifth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 26th day of September, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Schwartz Produce Co. of 6 crates of

lettuce and 3 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Schwartz Produce Co. to purchase a commodity, to wit, 9 boxes of Persian melons at \$3.09 per box as a condition of the sale to them and as an integral part thereof of the aforesaid 6 crates of lettuce and 3 crates of carrots; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted as issued thereunder).

#### Forty-sixth Count

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 29th day of September, 1944, at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New [fol. 38] York, the defendant herein in connection with the sale by him on said date to Schwartz Produce Co. of 5 crates of lettuce and 5 crates of carrots, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Schwartz Produce Co. to purchase a commodity, to wit, 10 baskets of sweet potatoes at \$2.70 per basket as a condition of the sale to them and as an integral part thereof of the aforesaid 5 crates of lettuce and 5 crates of carrots, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

**Forty-seventh Count**

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 9th day of October, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Friedman Bros. of 5 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Friedman Bros. to purchase a commodity, to wit, 10 bags of onions at \$2.00 per bag as a condition of the sale [fol. 39] to them and as an integral part thereof of the aforesaid 5 crates of lettuce; again the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder):

**Forty-eighth Count**

And the said United States Attorney in manner and form as aforesaid further respectfully informs this Court:

That heretofore, to wit, on or about the 13th day of October, 1944 at the Southern District of New York and within the jurisdiction of this Court, William Shapiro, having his principal place of business at 364 Washington Street, in the City, State and Southern District of New York, the defendant herein in connection with the sale by him on said date to Friedman Bros. of 6 crates of lettuce, the price of which was regulated by Revised Maximum Price Regulation No. 426 duly issued by the Price Administrator, unlawfully wilfully and knowingly evaded the provisions of the said Revised Maximum Price Regulation No. 426 by demanding, making and requiring the said Friedman Bros. to purchase a commodity, to wit, 15 bags of potatoes at \$3.25 per bag as a condition of the

sale to them and as an integral part thereof of the afore-said 6 crates of lettuce; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided (Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders duly adopted and issued thereunder).

John F. X. McGohey, United States Attorney.

[fol. 40] IN UNITED STATES DISTRICT COURT

(Title omitted)

NOTICE OF MOTION

SIR:

Please take notice that upon the annexed Plea in Bar of the defendant, William Shapiro, duly verified the 13th day of March, 1945, upon the exhibits annexed hereto and [fol. 41] upon the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a Term for Motions to be held at Room 318 of the United States Courthouse, Foley Square, in the Borough of Manhattan, City and State of New York, on the 19th day of March, 1945 at 10:30 in the forenoon of that day or as soon thereafter as counsel can be heard for an order sustaining the defendant's Plea in Bar and dismissing the respective counts of the respective information, as more specifically set forth in the annexed petition, and that the defendant, William Shapiro, be discharged with respect to the said counts, and for such other and further relief as may be just and proper in the premises.

Dated: New York, N. Y., March 13th, 1945.

Yours, etc., Curran & Stim, Attorneys for Defendant, William Shapiro, Office and P. O. Address, No. 29 Broadway, Borough of Manhattan, City of New York.

To: Hon. John F. X. McGohey, U. S. Attorney for the Southern District, District of New York, Attorney for the United States, U. S. Courthouse, Foley Square, New York City.

[fol. 42] IN UNITED STATES DISTRICT COURT

(Title omitted)

PETITION OF WILLIAM SHAPIRO

Comes now, William Shapiro, the defendant in each of the above entitled causes and Pleads in Bar to the respective informations in these causes and says:

1. That from September 11th, 1944 to September 20th, 1944, both inclusive, I was engaged as an individual in [fol. 43] the purchase and sale at wholesale of fruits and produce at 364 Washington Street, New York City, New York.

2. That on or about September 29th, 1944, there was left at my place of business a subpoena *duces tecum* and *ad testificandum* issued by Chester Bowles, Administrator of the Office of Price Administration, directing me to appear before John D. Masterton, Chief Enforcement Attorney, and Mortimer E. Greif, Enforcement Attorney of the Office of Price Administration of 350 Fifth Avenue, New York City, on the 2nd day of October, 1944, at 10 A. M., to testify concerning "all purchases and sales of fresh fruit and vegetables from September 1st, 1944 to September 28th, 1944" and requiring that I bring with me and produce at the said time and place "all duplicate sales invoices, sales books, ledgers, individual records, contracts and records relating to the sale of all commodities from September 1st, 1944 to September 28th, 1944. Exhibit A, which is annexed hereto and made part hereof, is a photostatic copy of the face of the said subpoena.

3. That prior to the return date of the said subpoena, by agreement between Mortimer E. Greif, Enforcement Attorney of the Office of Price Administration, and my then attorney, the return date was adjourned to the 4th day of October, 1944, at the same time and place. Annexed hereto and marked Exhibit B is a photostatic copy of the certificate of attendance signed by Mortimer E. Greif, Enforcement Attorney of the Office of Price Administration, certifying to my attendance as a witness at the time and place aforesaid, which certification appears on the reverse side of the said aforementioned subpoena.

4. That pursuant to the said subpoena I appeared at the Office of Price Administration on October 4th, 1944, [fol. 44] and after being duly sworn gave answer to certain questions put to me by Mortimer E. Grief, Enforcement Attorney of the said Office of Price Administration. A transcript of said testimony is annexed hereto and made part hereof, and marked Exhibit C.

7 5. That as appears from the said testimony, I claimed my privilege against self-incrimination under the provisions of the Emergency Price Control Act and correlated statutes, and of the provisions of the United States Constitution. That despite my claim of such privilege I was directed to turn over to the Office of Price Administration and to the said Enforcement Attorney my personal books and individual records consisting of my sales records, delivery receipts, invoices, accounts receivable ledger and cash book, for the period from September 1st, 1944 to September 28th, 1944. That pursuant to such direction I delivered the aforementioned records to the said Enforcement Attorney, as appears from the said aforementioned testimony (Exhibit C), and at the request of the said Enforcement Attorney said examination was adjourned to my place of business and continued there. There said submission of the aforementioned books and records was continued and completed at my place of business on October 6th, 1944, at which time and place the said records were actually examined by the Office of Price Administration.

6. That on the 20th day of December, 1944, three separate criminal informations containing 48, 3 and 3 counts respectively, were filed against me in the United States District Court for the Southern District of New York, bearing docket numbers C-119-147, C-119-143 and C-119-144 respectively. These respective informations will be separately treated as hereinafter indicated. Information No. C-119-147 is against me individually. Information No. C-119-143 is against me together with one Emanuel Lief. Information No. C-119-144 is against me and one Harry Simon.

As to Information No. C-119-147

. . . . .

7. (c) That counts 7 to 11 inclusive charge me with selling vegetables to Ernest Davino. Said Ernest Davino, together with one Cezare Davino, are co-partners doing business at 154 West Avenue, Brooklyn, New York, under the firm name and style of Davino Bros. That the records of transactions between the said firm and myself are kept under the name of Davino Bros. That the said aforementioned counts charge me with selling vegetables in violation of Revised Maximum Price Regulation No. 426 issued by the Price Administrator, by requiring the said Ernest Davino to purchase certain commodities therein set forth as a condition of the sale to the said Ernest Davino of certain other commodities. That from the documents hereinbefore referred to and turned over to the Office of Price Administration pursuant to the subpoena, there was obtained and there appeared the name of the said Ernest Davino in several instances. That annexed hereto and made part hereof are photostatic copies of invoices which directly cover sales made to the said Ernest Davino and Davino Bros. during the month of September, 1944, and which invoices, together with the original sales tickets and delivery receipts covering the said sales were examined by the Office of Price Administration. The said documents are annexed hereto and marked Exhibits F-1 to F-7 inclusive.

. . . . .

[fol. 46] 10. That I produced the aforementioned documentary evidence before the Office of Price Administration and for and on account of which I became immune from prosecution. That each and every count hereinbefore specifically referred to in the said information is directly and indirectly referable to the transactions contained in the aforementioned documentary evidence. That the Office of Price Administration used the evidence concerning the transactions respecting which I was immune from prosecution in obtaining the names and other leads and in preparing and searching out each and every evidence against me, and the United States Attorney in filing the information used the evidence so prepared and secured, as well as the leads therefrom. That all of such evidence was material and prejudicial to me.

Wherefore, I pray that each and every count of said information hereinbefore referred to be dismissed and that I be discharged hence.

Curran & Stim, Attorneys for Defendant, William Shapiro, Office and P. O. Address, No. 29 Broadway, Borough of Manhattan, New York City.

William Shapiro, Defendant in Person:

(Verified by William Shapiro, March 13, 1945.)

[fol. 47] EXHIBIT A, ATTACHED TO PETITION

OPA Form 2915-2

United States of America, Office of Price Administration  
Subpoena Duces Tecum

William Shapiro, 364 Washington St., New York City.

At the instance of the Price Administrator, Office of Price Administration, you are hereby required to appear before John D. Masterton, Chief Enforcement Attorney and Mortimer E. Greif, Enforcement Attorney of the Office of Price Administration, at 350 Fifth Avenue in the City of New York on the 2nd day of October, 1944, at 10 o'clock A. M. of that day, to testify concerning all purchases and sales of fresh fruits and vegetables from September 1, 1944 to September 28, 1944 by William Shapiro

And you are hereby required to bring with you and produce at said time and place the following documents:

All duplicate sales invoices

sales books

ledgers

inventory records

contracts and records

relating to the sale of all commodities from September 1, 1944 to September 28, 1944

Fail not at your peril

In witness whereof, the undersigned, Price Administrator of the Office of Price Administration, has hereunto set

his hand at New York, New York, this 28th day of September, 1944.

Chester Bowles, Price Administrator.

Notice to Witness: If claim is made for witness fee or mileage, this subpoena should accompany voucher.

[fol. 48] EXHIBIT B, ATTACHED TO PETITION

### Return of Service

I certify that a duplicate original of the within subpoena was duly served \*

- ☐ On the person named therein.  
☐ by leaving the said original at the principal office or place of business of the person named therein, to wit, at: .....  
 on the ..... day of ..... 1944

(Person making service),  
 (Title).

\* Check method used.

### Certification of Attendance

I certify that the person named herein was in attendance as a witness at OPA—350 Fifth Avenue, N. Y. C. on (Date or dates of attendance) Oct. 4, 1944

Mortimer E. Greif (Person certifying), Enforcement Atty (Title).

examination to be continued

MEG

OPA Form 2015-2 Back.

[fol. 49] EXHIBIT C, ATTACHED TO PETITION

Examination of books and records of William Shapiro pursuant to subpoena *Duces Tecum* issued September 28th, 1944 returnable October 2, 1944 and adjourned to October 4th, 1944.

## APPEARANCES

William Shapiro, witness.

Henry Silverman, Esquire by David Siskind, Attorney for witness.

Mortimer E. Greif, Enforcement Attorney Office of Price Administration.

WILLIAM SHAPIRO, being duly sworn deposes and says:

Q. Mr. Shapiro, have you produced, pursuant to the subpoena *Duces Tecum* which was served upon you on or about September 28th, 1944, all the records mentioned thereon?

A. Yes.

Q. Will you please give them to me?

Mr. Siskind: Is the witness being granted immunity as to any and all matters for information obtained as a result of the investigation and examination of these records?

Mr. Greif: The witness is entitled to whatever immunity which flows as a matter of law from the production of these books and records which are required to be kept pursuant to MPRs 271 and 426.

Mr. Siskind: Under those circumstances I believe that Mr. Shapiro would like to make a statement for the record.

Q. What is the statement?

A. (By Mr. Shapiro:) I wish to note that I am appearing [fol. 50] here as an unwilling witness pursuant to subpoena served upon me and that I claim my constitutional privilege. I do not waive immunity and specifically claim immunity under the provisions of the Emergency Price Control Act of January 30, 1942, and particularly United States Code, title 50, section 922, as well as under the Compulsory Testimony Act of February 11, 1893 (United States Code 1934, title 49, section 46) and under the Constitution or any other applicable statute or provision or section of the United States Code or otherwise, as to any and all records produced or testimony given throughout this inquiry or investigation or any proceeding arising thereunder. Upon these conditions I have produced the records and documents called for in your subpoena addressed to me and dated September 28, 1944.

Q. I now direct you to produce the books and records as required by the subpoena.

A. Here they are.

Q. Is there any objection to the continuation of this examination at your place of business as a matter of convenience with the same force and effect as though the examination were conducted here?

A. No.

[fol. 51] EXHIBIT F-1, ATTACHED TO PETITION

Sep 8 1944

Davino Bros.

|    |   |           |      |       |        |
|----|---|-----------|------|-------|--------|
| WS | 2 | 6 C Lopes | 4 50 | 27 00 | 27 00* |
|----|---|-----------|------|-------|--------|

Stamped on face:—Paid Sep 8 1944 William Shapiro Inc.  
Per 70 9/8

EXHIBIT F-2, ATTACHED TO PETITION

Sep 15 1944

Davino Bros.

|    |    |           |      |       |        |
|----|----|-----------|------|-------|--------|
| WS | 13 | 20 Grapes | 2 85 | 57 00 | 57 00* |
|----|----|-----------|------|-------|--------|

Stamped on face:—Paid Sep 22 1944 William Shapiro,  
Inc. Per 77 9/22

EXHIBIT F-3, ATTACHED TO PETITION

Sep. 22 1944

Davino Bros.

|    |    |            |      |       |         |
|----|----|------------|------|-------|---------|
| WS | 20 | 10 Catawba | 3 00 | 30.00 |         |
|    |    | 15 Sweets  | 3 00 | 45 00 |         |
| WS |    | 8 Lettuce  | 5 54 | 44 32 | 119 32* |

Stamped on face:—Paid Sep 29 1944 William Shapiro,  
Inc. Per 81 9-29

## [fol. 52] EXHIBIT F-4, ATTACHED TO PETITION

Sep 29 1944

## Davino Bros.

|    |    |           |      |       |     |         |
|----|----|-----------|------|-------|-----|---------|
| HS | 23 | 20 H Dews | 3.28 | 65 60 | 200 |         |
|    |    | 4 Lettuce | 5 54 | 22 16 |     |         |
|    |    | 5 Carrots | 5 38 | 26 90 |     | 116 66* |

Stamped on face:—Paid Oct. 6 1944 William Shapiro,  
Inc. Per 86 10/6.

## EXHIBIT F-5, ATTACHED TO PETITION

Sep 29 1944

## Davino Bros.

|    |    |             |      |       |  |         |
|----|----|-------------|------|-------|--|---------|
| WS | 25 | 15 Persians | 3 00 | 45 00 |  |         |
|    |    | 15 Grapes   | 2 85 | 42 75 |  |         |
|    |    | 10 Lettuce  | 5 54 | 55 40 |  |         |
|    |    | 15 Sweefs   | 3 00 | 45 00 |  |         |
|    |    | 3 Carrots   | 5 38 | 16 14 |  | 204 29* |

Stamped on face:—Paid Oct 6 1944 William Shapiro, Inc.  
Per 86 10/6

## [fol. 53] EXHIBIT F-6, ATTACHED TO PETITION

Sep 29 1944

## DAVINO BROS

|    |    |           |      |       |  |        |
|----|----|-----------|------|-------|--|--------|
| WS | 26 | 15 H Dews | 3 25 | 48 75 |  |        |
|    |    | 15 Grapes | 2 85 | 42 75 |  | 91 50* |

Stamped on face:—Paid Oct 6 1944 William Shapiro, Inc.  
Per 86 10/6

## EXHIBIT F-7, ATTACHED TO PETITION

Sep 29 1944

## DAVINO BROS

|    |    |            |      |       |  |         |
|----|----|------------|------|-------|--|---------|
| WS | 28 | 12 H Dews  | 3 00 | 36 00 |  |         |
|    |    | 10 Sweets  | 2 70 | 27 00 |  |         |
|    |    | 10 Lettuce | 5 54 | 55 40 |  | 118 40* |

Stamped on face:—Paid Oct 6 1944 William Shapiro, Inc.  
Per 86 10/6

[fol. 54]

IN UNITED STATES DISTRICT COURT

*U. S. vs. Shapiro*

C-119-147

MEMORANDUM DECISION OF COXE, J., DENYING MOTION OF  
DEFENDANT BY MEANS OF PLEA AND BAR TO DISMISS INFOR-  
MATION—Filed April 18, 1945

Motion of defendants denied for reasons stated in memo-  
randum in three cases against Joseph Justman, *et al.* Nos.  
C 119-145, C 119-146 and C 119-148.

Dated April 17, 1945.

See memorandum.

Alfred C. Cox, J. D. C.

April 17, 1945.

[File endorsement omitted]

[fol. 55] IN DISTRICT COURT OF THE UNITED STATES, SOUTH-  
ERN DISTRICT OF NEW YORK

C. 119/147

Violation of U. S. C. Title 50 App. Secs. 901 *et seq.*

Tie in sale of produce in violation of OPA Regulation  
No. 426

UNITED STATES OF AMERICA,

vs.

WILLIAM SHAPIRO

JUDGMENT AND COMMITMENT

On this 18th day of December 1945, upon the proceed-  
ings heretofore had herein and on motion of the United  
States Attorney, it is by the Court

Ordered and adjudged that the defendant be fined \$1,000  
on each of counts 7-8-9-10-11. Total fine \$5,000 to be paid  
within 10 days.

H. Church Ford, United States District Judge.

A true copy. Certified this 27th day of June 1946.

George J. H. Follmer, Clerk.

[fol. 56] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

C. 119-143

UNITED STATES OF AMERICA,

VS.

WILLIAM SHAPIRO

**Bill of Exceptions**

Before Hon. H. Church Ford, D. J., and a Jury.

New York, December 14, 1945.

**APPEARANCES:**

John F. X. McGohey, Esq., United States Attorney, for the Government; by Thomas F. Burchill, Jr., Esq., Assistant U. S. Attorney.

Curran & Stim, Esqs., Attorneys for Defendant Shapiro; Menahem Stim, Esq., of Counsel.

Mr. Stim: Your Honor, do I understand this case is being tried against William Shapiro or both defendants?

The Court: Only against William Shapiro.

Mr. Stim: That is right, and I am ready.

(A jury was duly impaneled and sworn.)

[fol. 57] (Mr. Burchill opened the case to the jury on behalf of the Government.)

(Mr. Stim opened the case to the jury on behalf of the defendant Shapiro.)

New York, December 17, 1945, 10:30 A. M.

Trial resumed.

**ERNEST D'AVINO**, called as a witness on behalf of the Government, being duly sworn, testified as follows:

**Direct examination.**

**By Mr. Burchill:**

- Q. Mr. D'Avino, what is your occupation?  
 A. Wholesale fruits and produce.  
 Q. How long have you been in that business?  
 A. About 22 years.  
 Q. And where is your place of business?  
 A. Brooklyn Terminal Market.  
 Q. That is located in Brooklyn?  
 A. Yes, sir.  
 Q. Do you know William Shapiro?  
 A. Yes, sir.  
 Q. Do you see him in the courtroom?  
 A. Yes, sir.  
 Q. Will you point him out, please?  
 A. This man here.  
 Q. The second man at the counsel table?  
 A. Yes, sir.

**Mr. Burchill:** Will your Honor direct the stenographer to note on the record that the witness has identified the defendant?

**The Court:** Yes.

- Q. How long have you known Mr. Shapiro?  
 A. Since I am in business.  
 [fol. 58] Q. Did you have a transaction with Mr. Shapiro in August, 1943?  
 A. Yes, sir.  
 Q. Do you remember the date of that transaction?  
 A. Not exactly.

**The Court:** In connection with which count are you bringing out this testimony?

**Mr. Burchill:** In connection with counts 7, 8, 9, 10 and 11. Will you mark this for identification, please.

(Marked Government's Exhibit 12 for identification.)

Q. I show you this paper and ask you whether or not that refreshes your recollection as to the date of the transaction?

A. Yes, sir.

Q. Pardon me?

A. Yes, sir.

Q. Will you please tell this Court and jury what was the date of the transaction?

A. August 20, 1943.

Q. August 20, 1943?

A. Yes, sir.

Q. Did you have a conversation with Mr. William Shapiro on that day?

A. Yes, sir.

Q. What did he say to you and what did you say to him?

A. I went there to purchase lettuce and Mr. Shapiro says, "If you want lettuce, you must buy Idaho potatoes and peas."

Q. And what?

A. Peas.

Q. What did you say?

A. Well, I needed the stuff, and I got to take it.

Mr. Stim: I object to the answer—let us get the answer, what he said, not that "I got to take it." That is not conversation.

[fol. 59] The Court: I assume that is what he told him.

Mr. Stim: He is asked "What did you say to him?"

The Court: His answer is what he meant to say, is that what you meant to tell him?

The Witness: Yes, sir.

The Court: I assume he is answering what he told him.

Q. What did you buy on that date?

A. I was supposed to buy ten lettuce.

Mr. Stim: I object to what he was supposed to buy. He was asked what did he buy on that date.

The Court: What did you buy?

The Witness: I bought ten lettuce.

Q. And what else?

A. And I got ten potatoes and ten peas with them.

Q. Did you want the peas?

Mr. Stim: I object to that.

The Court: Overruled.

Mr. Stim: Exception.

A. No, sir.

Q. What quantity of potatoes did you buy?

A. Ten hundred-bags of Idaho potatoes.

Q. Did you have another transaction with Mr. Shapiro in that month?

A. The same month?

Q. Yes.

A. I guess I did.

Q. Do you remember whether you did or not?

A. Not exactly.

Q. I show you Government's Exhibit 13 for identification and ask you whether or not that refreshes your recollection [fol. 60] as to whether or not you had another transaction?

A. Yes, sir.

Q. What was the date of that transaction?

A. August 28, 1943.

Q. Did you have a conversation with William Shapiro on that date?

A. Yes, sir.

Q. What did he say to you and what did you say to him?

A. I asked him for lettuce.

Q. What did he say?

A. He said "You got to buy peas with lettuce."

Q. Was there anything else said?

A. That is all.

Q. What did you buy on that day?

A. I bought seven lettuce and five carrots, and ten peas.

Q. Did you want the peas?

A. No, sir.

Q. Did you have another transaction with Mr. Shapiro shortly after that?

A. I guess I did.

Q. Do you remember the exact date?

A. No.

Q. I show you Government's Exhibit 14 for identification and ask you whether or not that refreshes your recollection as to the date of the transaction?

A. Yes, sir, August 30, 1943.

Q. Did you have a conversation with William Shapiro on that date?

A. Yes, sir.

Q. What was the conversation on that date?

A. I asked him for lettuce.

Q. What did he say to you and what did you say to him?

A. He said, "You better take peas with it."

Q. What did you buy on that date?

A. I was supposed to get three lettuce and I only got two that day.

Mr. Stim: I object to that. He asked him what did he buy on that date.

The Witness: I bought two lettuce and seven peas.

Q. Did you want the peas?

A. No, sir.

[fol. 61] Q. Did you have another transaction with Mr. Shapiro shortly after that?

A. Yes, sir.

Q. Do you remember the date?

A. No, sir.

Q. I show you Government's Exhibit 15 for identification and ask you whether or not that refreshes your recollection as to the date of the transaction?

A. Yes, sir.

Q. What is the date of that transaction?

A. September 10, 1943.

Q. And did you have a conversation with William Shapiro on that day?

A. Yes, sir.

Q. What did you say to him and what did he say to you?

A. I wanted to buy lettuce and he said, "You have got to take Persian melons with it."

Q. And what did you buy on that day?

A. Six lettuce and ten Persian melon.

Q. Do you mean ten crates?

A. Ten crates of Persian melon.

Q. And did you want the melons?

A. No, sir.

Q. Did you have a subsequent transaction with Mr. Shapiro?

A. In what?

Q. Did you have another transaction shortly after that with Mr. Shapiro?

A. Yes.

Q. Do you remember the exact date of it?

A. No, sir.

Q. I show you Government's Exhibit 16 for identification and ask you whether or not that refreshes your recollection as to the date of the subsequent transaction?

A. Yes, sir.

Q. What is the date, please?

A. November 19, 1943.

Q. Did you have a conversation with William Shapiro on that date?

A. Yes, sir.

Q. What was the conversation?

A. I asked him for lettuce and carrots.

Q. And what did he say?

A. You got to take celery with it.

[fol. 62] Q. Did you want the celery?

A. No.

Q. What did you buy on that day?

A. I bought five lettuce, two carrots, and ten celery.

Mr. Burchill: I offer these in evidence.

Mr. Stim: No objection.

Mr. Burchill: No further questions of this witness. You may inquire.

(Government's Exhibits 12 to 16 for identification marked in evidence.)

#### Cross-examination.

Mr. Stim:

Q. You do not handle lettuce and carrots only?

A. No.

Q. You handle all kinds of commodities?

A. Yes.

Q. Of course, when you wanted lettuce and carrots, you could have made a bigger profit if you only handled the scarce article?

A. How can we when we got to sell at ceiling?

Q. You bought them at ceiling?

A. Certainly.

Q. When you bought the first purchase of ten bags of potatoes, August 20th, you made a profit when you sold them, didn't you?

A. Yes.

Q. You made a profit on the potatoes?

A. Yes.

Q. When you bought the celery or lettuce, or you came to buy the celery and lettuce from Mr. Shapiro, these other commodities were available for sale in the other merchants' stores? You could have gone to any other merchant but Shapiro?

A. Sure.

Q. You bought from Shapiro quite a number of years, didn't you?

A. Yes, sir.

Q. And you bought other days than the days you testified to between August and November of that year 1943?

A. Well, I don't recall.

[fol. 63] Q. Well, in between August 20, 1943, and November, 1943, you bought in between then, didn't you?

A. Sometimes I did.

Q. This is not the only transaction that you had with Shapiro during that period from August until November? Do you understand what I mean?

A. (No response.)

Q. You were asked about four or five transactions. Now, you had other transactions in between August and November with Shapiro?

A. I don't recall. Maybe I did.

Q. And you are still buying from him today?

A. Certainly.

Mr. Stim: Will your Honor indulge me for a minute.

(Counsel examines papers.)

Q. Now, when you were buying a scarce article, such as lettuce and carrots, and you also have in your place potatoes and others, you try to sell them, don't you?

A. Surely.

Q. When you bought this merchandise from Mr. Shapiro, who picked the merchandise up?

A. My truckman.

Q. Your truckman?

A. Yes.

Q. I show you this paper and I ask you whether this is the sold ticket of the merchandise which you bought on August 28th?

Mr. Burchill: For which ticket?

Mr. Stim: The "sold" ticket.

A. Yes.

Mr. Stim: I would like to have it marked for identification.

(Marked Defendant's Exhibit A for identification.)

[fol. 64] Q. I show you this sold ticket and I ask you whether this is the sold ticket of your purchase of September 10th, ten Persians and six lettuce?

A. Ten crates of Persian melons and six iceberg lettuce.

(Marked Defendant's Exhibit B for identification.)

Q. Now, Mr. D'Avino how soon after the merchandise was picked up by your chauffeur or truckman did you receive a bill from Mr. Shapiro?

A. Well, maybe two days later.

Q. Later?

A. Yes.

Q. And how soon did you pay for it?

A. We pay once a week.

Q. I mean within about a week?

A. Within a week.

Q. You were not requested to pay cash?

A. No.

Q. You paid by check in the regular course of business?

A. Yes.

Q. And that is how you did business with him for a number of years?

A. Yes.

Q. Were you at liberty to return any of the merchandise if you wanted to?

A. Surely.

Mr. Stim: That is all.

Mr. Burchill: That is all.

[fol. 65] JOSEPH H. BAKER, called as a witness on behalf of the defendant being first duly sworn, testified as follows:

Direct examination.

By Mr. Stim:

Q. Mr. Baker, you came here especially to testify in behalf of the defendant William Shapiro, is that right?

A. That is right.

Q. And where do you live?

A. Norfolk, Virginia.

Q. What is your occupation?

A. I am in the wholesale produce business. My business is mainly growing and shipping produce and green vegetables.

Q. How long have you known the defendant Shapiro?

A. About six years?

Q. During that time did you do business with him?

A. Continuously.

Q. Do you know other people in your community who know him?

A. I didn't get the question.

Q. Do you know other merchants in your community who know Mr. Shapiro?

A. Numerous people in that section of the country and in other sections of the United States with whom I have talked from time to time.

Q. Just a moment. Did you have occasion to discuss with these people the defendant William Shapiro's reputation for honesty, integrity, and truth-telling?

A. I have discussed it with other growers and shippers in all sections in my community and in numerous sections of the United States, and they hold him in the same high regard—

Q. Just a minute. I want to ask you a question as to his reputation.

A. His reputation for truthfulness and for reliability and for trustworthiness is above reproach.

Mr. Stim: That is all.

Mr. Burchill: No questions.

[fol. 66] W. C. JACOB, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stim:

Q. Mr. Jacob, where do you live?

A. Onley, Virginia.

Q. What is your occupation?

A. I am in the produce business, grower and shipper.

Q. You grow the products?

A. Yes, sir.

Q. Did you come here especially from your home out in Virginia, to testify for William Shapiro?

A. That is right.

Q. How long have you been doing business with Shapiro?

A. About fifteen years.

Q. During that time did you have occasion to discuss with other men in your community Mr. Shapiro's reputation for honesty, integrity and truth-telling?

A. Yes, in a general way I did.

Q. And what is that reputation?

A. Very good. I consider him absolutely honest in all his dealings.

Mr. Stim: Thank you.

Mr. Burchill: No questions.

(Short recess.)

[fol. 67] FRANK M. MITCHELL, called as a witness by the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Stim:

Q. Mr. Mitchell, where do you live?

A. Ridgewood, New Jersey.

Q. And what business are you in?

A. We are in the mercantile credit agency business.

Q. Is that connected with the produce industry?

A. We rate them financially and morally, each firm.

Q. All over the United States?

A. And Canada.

Q. In connection with rating these merchants, do you inquire into their background financially as well as morally?

A. Yes.

Q. And do you inquire whether or not they comply with regulations of the Government, OPA, and so forth?

Mr. Burchill: If your Honor please, I understand this man to be a character witness. He can testify as to whether the defendant's character is good or bad, and that is the extent of his testimony.

Mr. Stim: I want to show the background.

The Court: I think you are entitled to show it.

Q. What is your answer?

A. What is the question?

(Question read.)

A. Yes, as part of the investigation.

Q. And as part of this investigation did you so inquire into the character and reputation of the defendant William Shapiro?

A. In the course of years, yes, sir.

Q. And did you have any opportunity to discuss with other people Mr. Shapiro's reputation for honesty, truth-[fol. 68] fulness, and compliance with Government regulations, and obedience to the law?

A. Yes, sir.

Q. And what is that reputation?

A. Excellent.

Mr. Burchill: No questions.

The Court: Well, all right, call your next witness.

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CLARENCE M. FREY, a witness called by the defendant, being duly sworn, testified as follows:

Direct examination.

By Mr. Stim:

Q. Mr. Frey, where do you reside?

A. North Bergen, New Jersey.

Q. And what is your business?

A. I am the perishable traffic district manager of the Missouri-Pacific Lines Railroad.

Q. How long have you known the defendant?

A. About twenty years.

Q. And do you know other men in the community who know him?

A. I do.

Q. And did you ever have any opportunity to discuss with these men the defendant's reputation for honesty, truthfulness, and integrity?

A. I have.

Q. And what is that reputation?

A. Excellent.

Mr. Stim: Thank you.

Cross-examination.

By Mr. Burchill:

Q. You say you discussed his reputation with other men in the community. In what community did you discuss it?

[fol. 69] A. Our little produce community down in Washington Street.

Q. Did you ever discuss his reputation with the wholesalers?

A. Yes, sir.

Q. And with the receivers?

A. Wholesalers and receivers are one and the same, sir.

Q. Well, are you sure of that?

A. Yes, sir.

Q. What is Mr. Shapiro?

A. A receiver and a wholesaler.

Mr. Burchill: I see. That is all.

Mr. Stim: That is all.

The Court: Ladies and gentlemen of the jury, during the recess of the court do not discuss this case among yourselves and do not permit anybody to discuss it with you. Do not make up your mind about it until it is finally submitted to you.

Recess until 2:15.

(Recess taken until 2:15 P. M.)

## AFTERNOON SESSION

## MOTIONS TO DISMISS

(The following occurred in chambers, out of the hearing and presence of the jury):

Mr. Stim: I move to dismiss count No. 1 in information C-119-143 on the ground there is insufficient evidence, and that the Government failed to prove a *prima facie* case.

The Court: Let the motion be sustained.

As to count No. 3.

Mr. Stim: Of the same information, I move to dismiss on the same grounds, that is Meines.

[fol. 70] The Court: I haven't checked Meines.

Mr. Stim: You have the same situation.

The Court: Sustained as to that.

Mr. Stim: That disposes of the small information.

The Court: Yes, that disposes of the small information.

Now, as to the large information beginning with count 1.

Mr. Stim: There, your Honor, I move to dismiss that count on the ground if your Honor will see in the testimony he says he spoke to Emanuel Leef who—

The Court: As to count 1 this man details his conversation with the man Shapiro.

Mr. Stim: Well, all he asked was "What else do you want?"

The Court: He said "You got to buy something else."

Mr. Stim: Did he speak to Shapiro?

The Court: That is on page 7. Overruled as to count No. 1.

Mr. Stim: Exception.

The Court: No. 2 is page 12 and 13. Are they with Leef? That is where Mr. Simon asked him directly. I am going to leave that in.

Mr. Stim: I respectfully except.

The Court: You are allowed your exception.

Mr. Stim: I move as to 3 in connection with Deroshinsky on the same ground.

The Court: Overruled.

Mr. Stim: I move as to 7, 8, 9, 10, and 11 of D'Avino, your Honor will see he stated "What else?" He said, [fol. 71] "I took some onions and some other thing."

The Court: He made it pretty clear.

Mr. Stim: If your Honor will look at it you will see—

The Court: That is not here yet.

Mr. Stim: I am pretty sure he said "What else?"

The Court: Here is what D'Avino said.

Mr. Burchill: That was the first witness this morning.

The Court: This man testified as to count 3 of this large indictment.

Mr. Stim: Yes. We disposed of that. I am sure he said "What else do you want?"

The Court: All right, D'Avino. I will have to overrule as to that.

Mr. Stim: Exception.

The Court: And now 36 and 37. I have not found anything.

Mr. Stim: You have the testimony there.

The Court: Yes, and I looked through my memorandum here. All he said was that the fellow tried to make a sale.

Mr. Stim: Your Honor even asked him.

The Court: Yes, I asked him "Was he just trying to sell you some stuff?" I think I will sustain it as to 36 and 37.

Mr. Stim: Very well. Martori—

The Court: Martori I think is so vague that I can't accept it.

Mr. Stim: I move to dismiss 39, 40 and 41.

The Court: Sustained. That brings us down to 42, 43, 44 and 46.

[fol. 72] Mr. Stim: If your Honor will look at Benti-  
venga's testimony, I studied it here.

(Discussion off the record.)

The Court: I overrule your motion as to count 42.

Mr. Stim: Exception.

The Court: Now we come to count 43.

(Discussion off the record.)

The Court: Overruled.

Mr. Stim: Exception.

The Court: Count 44.

(Discussion off the record.)

The Court: Overruled.

Mr. Stim: Exception.

The Court: Count 46.

(Discussion off the record.)

The Court: Well, he said the same as in the other instance, so I will overrule it.

Mr. Stim: Exception.

Mr. Burchill: And then as to count 48 the Government moves on the ground that the witness is unavailable.

The Court: So we have to submit to the jury under information No. 147 the charges set out in counts 1, 2, 3, 7, 8, 9, 10, 11, 42, 43, 44, and 46. Am I correct?

Mr. Burchill: That is right.

Mr. Stim: Twelve counts.

Mr. Burchill: Dismissing 1 and 3 of the small information, and 36, 37, 39, 40, and 41 of information 147.

The Court: That is right.

Mr. Stim: As well as 48.

The Court: Yes, that is dismissed on motion.

[fol. 73] Mr. Stim: At this time I renew my motion, which I made before the Honorable Judge Coxe, because under the rules I had to make that motion before trial.

That motion dealt with my contention that the information should be dismissed on the ground that when the defendant was subpoenaed to produce his records and books, and he did so produce those books, but at that time claimed immunity under the provisions of the Compulsory Testimony Act of February 11, 1893, as well as under that particular immunity clause which is incorporated in the Emergency Price Control Act of January 30, 1942. He obtained immunity by affirmatively asserting immunity.

The Court: My information from you is that the question was presented to Judge Coxe, and he denied your motion. I shall not review his action in that case. In conformity with the ruling made by Judge Coxe I will overrule your motion and give you an exception.

Mr. Stim: Shall it be considered for the purpose of this motion that all the papers that were presented to Judge Coxe shall be deemed to be part of the record in this case?

The Court: Yes, I think that is proper.

Mr. Stim: I also would like to renew the motion which I made before Judge Caffey in which I asked Judge Caffey for permission to file a protest with the Emergency Court of Appeals, against the validity of Regulation 426, subdivision 11, the same regulation with the violations of which the defendants are herewith charged.

[fol. 74] Judge Caffey denied my application, and I renew it merely for the purpose of the record.

**The Court:** All right, motion overruled.

**Mr. Stim:** I assume in the same way the record which was presented to Judge Caffey shall be deemed part of the record on this motion here.

**The Court:** It is already a part of the record.

**Mr. Stim:** I now move to dismiss the entire information C-119-147 on the ground that the information does not charge the defendant with the violation of the Emergency Price Control Act as passed by Congress. The evidence is clear that there is no contention made by the Government that the defendant did charge over-ceiling prices or did anything in conjunction with violating that particular law, and in view of the fact of that evidence I contend no crime was committed, and I move to dismiss the information on that ground.

**The Court:** Motion overruled. Exception to you.

**Mr. Stim:** Exception.

**The Court:** While we are here why don't you make up your record as to the stipulation?

**Mr. Stim:** Yes, I would like under part of the defense to offer in evidence through the testimony of several merchants who are of long standing in the industry, and who have been in the industry for about a period of 20 years—

**Mr. Burchill:** Have you a list of them?

**Mr. Stim:** I will give you them: Fred Vahlsing, W. C. Deyo, Michael Kodish, Thomas F. Cochran—who will testify that long before the office of Price Administration there was a custom in the industry that in order to move—that in order [fol. 75] to do business along economic methods, and to enable the merchant to move his merchandise and spread the delivery of all commodities to the public, it was generally a custom that such merchants in this industry, in the wholesale produce industry, when selling scarce commodities, to also require, by ordinary business persuasion, to have these buyers purchase at the same time plentiful commodities.

These witnesses will further testify that the wholesalers and the receivers, such as William Shapiro, the defendant herein, in the course of their business were required as a matter of custom, when they were buying merchandise from shippers and growers, to acquire their merchandise the same way. They would obtain a cargo of scarce merchandise, but at the same time they would be required, by ordinary business persuasion, to acquire a carload or car-

loads of plentiful merchandise. That the methods which were used were in the custom and practice of the business of the produce industry before the Office of Price Administration. It is the same method which is being used today. That the industry has repeatedly required and requested that the Administrator hold hearings and find as a fact whether or not that particular method and custom and practice is in violation of the law, but that the Administrator at no time consented to hold such hearings.

They will further testify that a protest was filed with the Office of Price Administration requesting the—

Mr. Burchill: Can you give us the approximate time?

[fol. 76] Mr. Stim: March 16, 1945—requesting that he issue subpoenas for the purpose of getting evidence and establishing the custom and practice, but that the Administrator refused to do so by an order dated April 20, 1945. I would like to offer the order in evidence, your Honor.

Mr. Burchill: I object to it. I think I object to the whole line of testimony. It is not competent or relevant in this case as to whether or not Shapiro sold the articles in connection with other commodities.

The Court: My judgment is that none of the evidence which you have stated and offered is relevant or competent on the issue here as to whether or not the defendant made these sales for the purpose of evading the Price Control Act by securing an advantage beyond the prices fixed for the scarce commodities through forcing into the transaction commodities which were plentiful and which were not quite so salable. My judgment is your tender or offer of the testimony should be denied, and the objection offered by the Government sustained, to which you are allowed an exception, and your statement of what you propose to prove may be made a part of the record for that purpose.

Mr. Stim: May that be marked for identification?

The Court: Yes.

(Marked Defendant's Exhibit D for identification.)

Mr. Stim: May I make a further motion? I move to dismiss further on the ground that the Government failed to prove the regulation.

[fol. 77] The Court: Overruled. We take judicial notice of the regulations.

Mr. Stim: By "regulation" I refer to Regulation 426, subdivision 11.

(The clerk entered the court's chambers.)

The Court: Mr. Clerk, I sustain motions to dismiss as to certain of these counts.

(Discussion off the record.)

The Court: I will tell the jury that I am submitting only these specific counts and they will disregard all the counts except these particular counts.

Mr. Stim: Will you agree, Mr. Burchill, to have the separate counts before the jury incorporated individually?

The Court: When the jury retires it seems to be your custom, Mr. Burchill, to let them have a copy of the information. I suppose the clerk has a copy that he has available.

The Clerk: Usually we pass them the original with the back off.

The Court: I think it is fair ~~because~~ the jury may be confused if we pass in all these counts. I would like them to have a copy of the information with the counts embraced in it only which are being submitted. Can that be arranged?

Mr. Burchill: The copy that I have has some notation on it.

The Court: Let us get it straightened out.

(The following occurred in the court room in the presence and hearing of the jury.)

The Court: Ladies and gentlemen of the jury, the Court has found the evidence insufficient to support the charges [fol. 78] in reference to certain of the counts that have been under inquiry. I have sustained the defendant's motion to dismiss counts 1 and 3 of information 143. That eliminates that information from the case.

I have sustained the defendant's motion to dismiss for lack of evidence to support it, the charges set out in counts 36, 37, 39, 40 and 41 of information 147. I have sustained those motions upon the ground that the evidence is not sufficient to sustain the charges set out in those counts of the information, so they are dismissed and will be ignored by the jury. That leaves us here for trial on the ultimate question, counts 1, 2, 3, 7, 8, 9, 10, 11, 42, 43, 44 and 46 of information No. 147, and the testimony will be directed as to those counts only for your consideration on the question of guilt or innocence on those counts in information 147.

Mr. Stim: Will your Honor also tell the jury on the motion of the United States Attorney as to count No. 48.

The Court: Yes count 48 was dismissed by the District Attorney, the statement being that the witness was not available to support that count, and his motion for dismissal was sustained.

JOHN R. WOOD, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stim:

Q. Mr. Wood, where do you reside?

A. 2 Vesper Place, Bloomfield, New Jersey.

Q. What is your occupation?

A. Banking.

[fol. 79] Q. What bank are you connected with?

A. The Corn Exchange Bank Trust Company, New York City.

Q. Do you know the defendant Shapiro?

A. I do.

Q. How long have you known him?

A. Oh, for fifteen to twenty years.

Q. Do you know other men in the community who know him?

A. Yes.

Q. Did you ever have any discussion about his reputation for honesty, truth-telling and integrity among them?

A. No, sir.

The Court: He said he hasn't had an opportunity to discuss it.

Q. Did you ever discuss with them

A. I never had occasion to.

The Court: He asked whether you ever had an opportunity to discuss it with other people.

The Witness: No, sir.

The Court: He said he has not.

Q. Do you know what his reputation is for honesty, truth telling and integrity?

The Court: How would he know if he hasn't discussed it? I don't think he is qualified to answer that.

Q. Did anyone in the community ever speak to you about Shapiro's reputation for honesty, truth telling and integrity?

A. Did anyone speak to me about it?

Q. Yes.

A. I had lots of people that I met that know Mr. Shapiro. [fol. 80] Q. And what did they tell you.

The Court: Wait a minute. You haven't answered the question. He asked you if anybody ever spoke to you about Mr. Shapiro's honesty, integrity and truth telling.

The Witness: No, sir.

Q. During the fifteen year or twenty years that you have known him, did you have any occasion at all to find any act that he has done, as far as you know, that is dishonest or improper?

Mr. Burchill: I object to that.

The Court: Sustained.

Mr. Burchill: I object. The witness is not qualified to answer that.

The Court: Gentlemen, step up here and let me discuss this.

(Colloquy between Court and counsel at the bench.)

The Witness: Maybe I misunderstood his question.

Q. Did you have any occasion to discuss or have anybody talk to you about Mr. Shapiro's reputation for honesty and integrity and truth telling?

The Court: He has already answered that. I think he has said twice that nobody has talked with him about it.

By the Court:

Q. Did you discuss it with people—

A. When we make a loan to people—

[fol. 81] Q. I am not asking anything about a loan but have you discussed with people the honesty and integrity and truth telling of the defendant?

A. Yes, people throughout the market, I have known lots of people that I have spoken with about Mr. Shapiro.

The Court: We had a lot of trouble finding that out. He seems to have qualified himself now.

By Mr. Stim:

Q. As a result of hearing people in the market talk about Mr. Shapiro, what is his reputation for truth telling, honesty and integrity?

A. Good.

Mr. Stim: That is all.

Mr. Burchill: No questions.

FRED H. VAHLSING, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stim:

Q. Mr. Vahlsing, where do you reside?

A. South Orange, New Jersey.

Q. What business are you in?

A. Principally grower and shipper of vegetables.

Q. Are you also in the produce business in New York City?

A. Yes, we have a shop in New York City.

Q. What is the amount of business that you do approximately?

A. Last year we did about seventeen million dollars.

Mr. Burchill: I don't see the relevancy about how much business he does.

[fol. 82] The Court: Probably there is some relevancy as to his acquaintanceship and the extent of his acquaintance in New York that he wishes to develop.

Mr. Burchill: If your Honor please, it is relevant—

The Court: Oh, yes.

Q. Do you know the defendant William Shapiro?

A. I do.

Q. How long have you known him?

A. At least twenty years or more.

Q. And during that time did you have any occasion to discuss with other people in the trade or in the com-

munity the defendant Shapiro's reputation for honesty, truth telling and integrity?

A. No, I didn't discuss that but if you asked me—

The Court: That is all he asked you and you need not fix up a question to ask yourself.

Mr. Burchill: I submit the witness is not qualified.

Q. Did you hear anybody in the community talk about Shapiro's reputation for integrity, honesty and truth telling?

A. Oh, yes, I heard that mentioned in the trade.

Q. What is that reputation?

A. Mr. Shapiro's reputation in the trade is very good, and I should say excellent.

Mr. Stim: That is all.

Cross-examination.

By Mr. Burchill:

Q. Is your line of business on the same level as Mr. Shapiro's?

A. Well, there is a little difference there.

[fol. 83] Q. Do you sell to some of the people that he sells to?

A. Yes.

Q. Or that your firm sells to?

A. Yes.

Mr. Burchill: That is all.

WILLIAM SHAPIRO, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stim:

Q. Mr. Shapiro, how old are you?

A. Forty-eight.

Q. Where do you reside?

A. 3595 Bedford Avenue.

Q. Brooklyn?

A. Brooklyn.

Q. And are you married?

A. Yes, sir.

Q. You live with your wife and your family there?

A. Yes, sir.

Q. What business are you in?

A. Wholesale fruit and produce.

Q. How long have you been in that business?

A. 28 years.

Q. And where are you now located?

A. 364 Washington Street, New York.

Q. Have you ever been convicted of a crime?

A. No, sir.

Q. What is the type of your business?

A. Wholesale fruit and vegetable.

Q. What kind of commodities do you handle?

A. Practically everything in the fruit and vegetable line.

Q. Will you tell us what was your total amount of business sales made by your firm during the period from the latter part of 1943 and through the year 1944, approximately—I mean during the period, approximately. You [fol. 84] don't have to give it in exact figures.

A. \$1,800,000, I think.

Q. Will you tell us what was the net profit on that \$1,800,000 before considering your income tax payment or any salary you drew from the business?

A. A loss of—

Mr. Burchill: Just a minute, I object.

The Court: On what theory do you contend that that is material?

Mr. Stim: I want to show that there isn't any enrichment.

The Court: Never mind what you want to show. How do you think that is material? How do you regard that as relevant to this issue?

Mr. Stim: They raised the question or the impression has been given to the jury that it was a question of his enrichment and I want to show that on a business of close to two million dollars what his profit or loss was.

The Court: I sustain the objection.

Mr. Stim: Exception.

Mr. Burchill: At this point, will your Honor direct the witness when I rise at the end of a question, that the witness withhold his answer.

The Court: You understand that, don't you?

The Witness: Yes, sir.

Q. Mr. Shapiro, are there times in the year when certain commodities that you handle are scarce and others are plentiful at the same time?

A. Yes, sir.

Q. What is your method of selling these commodities to the wholesaler; do you give everyone all that they want?

A. No, sir, it cannot be done.

[fol. 85] Q. What do you do?

A. I try to give everybody as much as I possibly can in a fair way. I try to ration everything to everybody in a fair and equitable way.

Q. Do these merchants who come to buy from you generally or always want a scarce article alone on which they can make a big profit?

Mr. Burchill: If your Honor please, I object to that.

The Court: I sustain the objection. You are putting words in the witness's mouth.

Q. Tell us what is the method of your doing business in such a situation?

A. Well, if we have something that is very scarce, we try to give it to all of our trade and I try to ration it in proportion the best way I know how to see that everybody get a fair and equal deal.

Q. When a man comes into your place of business who does he generally do business with if he wants to buy something?

A. Either myself or a salesman.

Q. When you say either yourself or your salesman, what do you mean by that?

A. Well, if I am there and I am not busy, he will come over to me. If I am busy, he may come to the salesman; it all depends who is not busy.

Q. What happens if he comes to you or one of your salesmen who handles the transaction?

A. If he comes to me, I do; if he comes to the salesman, the salesman does it.

Q. Does it ever happen that one or the other, either you or the salesman who has charge of the transaction, transfers the transaction or has someone else conclude it?

A. No, sir, never.

[fol. 86] Q. What is the first thing that is done when a business man comes in to your place when he selects a certain product?

A. We make out a sales ticket. There is my sales book there, Mr. Stim.

Q. I show you Defendant's Exhibit A for identification and ask you to tell the jury what happens when he comes in, how is it made out?

A. I have the salesbook over there.

Q. I will withdraw that receipt. What happens.

A. When the man comes over, I always put his name and commodity down here.

Q. When you say down here, what do you mean?

A. On the sales ticket. It is a duplicate of the sold card. I make it out in duplicate.

Q. Is that the same thing as Defendant's Exhibit A for identification?

A. Yes, sir.

Q. All right, let us go to this, because I have a reason for that. Who, as a rule, makes out the sales tickets on the sold cards?

A. The salesman.

Q. When you say the salesman, whom do you mean?

A. The man who does the business with the man that buys.

Q. Can you from that particular sales ticket, Defendant's Exhibit A, tell who made out the particular sale at that time?

A. Yes, sir.

Q. During 1943, December 28, 1943, who were the salesmen in the place in addition to yourself?

A. Harry Simon and Mannie Leef and myself.

Q. What does that indicate?

A. D'Avino Bros., 10 peas, 5 carrots and 7 lettuce.

Q. You made the sale?

A. Yes, sir.

Mr. Stim: I offer it in evidence.

Mr. Burchill: I don't see the relevancy of this, your Honor.

[fol. 87] Mr. Stim: Your Honor, we will come to the relevancy in a moment.

The Court: He may have some purpose.

Mr. Stim: I have a purpose.

Mr. Burchill: Could it be received subject to connection?

The Court: It is his record of that particular sale about which you introduced the bill. There may be some comparison he wants to make.

(Marked Defendant's Exhibit A in evidence.)

Q. I notice certain figures on it, certain numerals alongside the product; what do these numerals indicate?

A. That represents the car number.

Q. What do you mean by the car number?

A. Where the merchandise came from.

Q. Are you able from such a record as Defendant's Exhibit A, to trace what particular carload that merchandise came from?

A. Yes.

Q. Will you tell us whether there is any regulation which requires you on these original transactions such as Exhibit A to have such a record?

A. The Department of Agriculture—

The Court: What materiality has that to this issue?

Mr. Stim: I will come to it, your Honor.

The Court: Step up here, gentlemen, I want to know just where we stand.

(Colloquy at the bench between Court and counsel.)

Q. What is the car number?

A. 18612 on the peas.

Q. What is the price that you charged?

A. \$3.50.

[fol. 88] Q. Did you on the same date sell a much greater quantity of peas to the United States Army?

Mr. Burchill: I object to the question.

The Court: Sustained.

Q. Did you at any time charge any customer when you sold them a plentiful article, together with a scarce article, demand any greater price than what you charged to others who bought only the plentiful article?

Mr. Burchill: I object to the question.

The Court: There is no such claim made here, so there is no use adducing proof on something that is not contended. He is not charged with making a charge in excess of the ceiling price on the transaction.

Q. You had salesmen, you say?

A. Yes.

Q. What instructions did you give to any salesmen who worked for you?

The Court: Wait just a minute. I eliminated every count that involved his salesmen, didn't I?

Mr. Stim: That is right, your Honor.

The Court: Then what materiality has that question?

Q. The commodities that you sell, what is the length of time that is required by you to sell these commodities before they become a loss to you?

A. I usually try to sell all the merchandise we have from four to six hours. We start to work generally about twelve o'clock at night and we try our best to be sold out by three or [fol. 89] four in the morning. If we are not sold out by that time, we are pretty well stuck, so we have between four or five hours to sell all our merchandise. We have got to move it.

Q. Are there any refrigerating facilities to put any of the merchandise in?

A. None.

Q. Now, Mr. Shapiro, the sale that Mr. D'Avino testified to was August 28, 1943.

A. Yes.

Q. Did you hear some testimony given here that in order to purchase a scarce article, you required or demanded that your customers purchase a plentiful article; do you recall that testimony?

A. Yes.

Q. Did you ever make such a demand?

A. No.

Q. Did you at my request pick out from your records of that particular date the original sales slips showing the sales of scarce articles alone?

Mr. Burchill: I object to that. I object to the form of the question and the question itself. It is leading this witness.

Mr. Stim: Your Honor, I have the record here.

The Court: It makes no difference what you have, he is objecting to your question. In the first place, it is leading,

and secondly, it is directed to an issue which is not involved here, according to my understanding.

Mr. Stim: May I be heard on it?

The Court: Yes.

Mr. Stim: The issue here is that this defendant compelled merchants who were buying from him, in order to obtain a scarce article, to buy with it in combination a plentiful article. I am merely asking him whether or not [fol. 90] that is so. He said no. I desire to show by records that on the very same day, which is the date testified to by the witness for the Government, that the situation is different.

The Court: That has no bearing on the particular issue involved.

Mr. Stim: Wouldn't that aid the jury to determine whether or not that happened?

The Court: Because you didn't do something for me doesn't mean you didn't do something for somebody else, and it doesn't prove anything. Why try to prove issues that are not involved here. Why prove your innocence on charges that haven't been made against you?

Mr. Stim: The only way I can prove my innocence—

The Court: You can prove he did or did not have the transaction. He is not charged with that and we are limiting this trial to the other transactions.

Mr. Stim: Your Honor, may I have these cards marked for identification, and then I will offer them and your Honor will refuse my offer and I will have an exception?

The Court: Yes.

(Marked Defendant's Exhibit E for identification.)

Mr. Stim: I have a great number of such cards to offer and rather than encumber the record, I would just like to make a general offer and your Honor will sustain the objection and I will have an exception?

The Court: Very well, I sustain the objection and you may have your exception.

[fol. 91] Q. How many transactions did you generally have in the course of the night?

A. Oh, I would say about a hundred to a hundred and twenty-five.

Q. How many in the course of a year?

A. 24 thousand or 30 thousand a year.

Q. And how is the merchandise sold by you. Do you ever sell anything other than at ceiling prices?

A. No, sir, I never get anything above ceiling at any time.

Q. Are there occasions when you sell merchandise below ceiling prices?

A. Plenty of times.

Q. After this record is made by you, the original record, do you send a bill out to the customer?

Mr. Burchill: If your Honor please, I think he is still leading the witness. He can ask what he does.

The Court: Well, that isn't very material. Go ahead.

A. After these sales are made, we give it to the bookkeeper and she makes out a bill, duplicate bill, with the initials of the salesman, the amount, the commodity and the price. That bill is held until the end of the week and then sent out to our customer.

Q. And Government's Exhibit 13 is one of these, isn't that so?

A. Yes, sir.

Q. What is the initial W.S.?

A. W.S. shows that I made the sale.

Q. And if anybody makes a sale of such merchandise, his initials would appear on it?

A. Whoever the salesman may be.

Q. Mr. D'Avino testified about a certain transaction or transactions, I think three or four or five on the average; how often did you sell to the firm of D'Avino Bros.?

[fol. 92] Mr. Burchill: I don't see what relevancy that has, your Honor.

The Court: It may be introductory. Go ahead.

A. I will say I sold that man a thousand times. I will safely say better than a thousand times.

Q. Will you tell the Court and jury what is your best recollection of the conversation you had with D'Avino when he came to you to purchase merchandise on August 28th, August 30th, September 10th and November 19th of 1943?

A. Whatever conversation Mr. D'Avino had with me. If he would ask for carrots, for instance, I would say "What

else do you want?" If he asked for lettuce, I would say, "What else do you want?" And if he asked for honeydews, I would say "What else?" I always try to sell whatever commodity I have, and I have a habit of asking anybody "What else do you want?" trying to sell everything we have.

Q. Did you ever tell him, you must take, let us say, carrots in order to get peas?

A. No, sir, I would say, "What else do you want?" but never say that he has to take anything.

Q. How many merchants are handling the same merchandise that you are handling?

A. I counted 252 merchants that are in our market.

Q. All handling the same type of merchandise?

A. Yes.

Q. In order to buy merchandise from shippers, how is that sold to you?

A. In all ways we buy it.

Q. When you order anything on the market, how do you order and what do you receive?

A. Well, we go out and buy f.o.b. right at the shipping point, and buy direct from the farmers, and buy all commodities.

[fol. 93] Q. Do you buy only scarce articles?

A. I do not know what is scarce. It takes a car 12 to 15 days to get here. What is scarce today might not be scarce tomorrow or the following day. It may or may not be scarce when it comes in.

Q. When you ordered merchandise, how long does it take to receive it in New York?

A. 12 to 15 days.

Q. And can you tell at the time you order it what is scarce or is not scarce?

A. That is impossible.

Q. What does it depend on?

A. Depending upon demand and supply, weather conditions; everything enters into it.

Q. Do you request cash payment when the merchandise is scarce or otherwise?

A. I do not think I have one per cent. Out of \$1,800,000 business I do not think one per cent of that is cash. Everything is practically charge.

Q. And is every one of your transactions entered in the books?

A. Positively.

Q. Did the OPA examine your books?

A. Yes, sir.

Q. How long were they there?

A. I think there were three men there for from seven to ten days.

Q. And they had the books available, all of them?

A. Everything they asked for they got immediately.

Q. And was there a single transaction on the books which was not properly recorded?

A. No, never been so in my business.

Q. Did they make any complaint about any transaction not recorded?

A. No, sir. The OPA is here for that (indicating).

The Court: There is no such charge here. You are trying to show he is innocent of something he is not charged [fol. 94] with. I am going to confine this case to the issues here involved. You confine your testimony to these issues. We can't be trying this man for something nobody is accused of.

Q. Were you always in the place of business?

A. Most of the time. When I am in New York I am in the place of business.

Q. Are there occasions when you are away from New York?

A. Oh, yes. I am away as often as I can: California, Texas; I go to Chicago. I go down South.

Q. What is the purpose of going to those places?

A. Well, to make all sorts of deals for the coming season, and there is all different things. I have to go out and buy up crops or make some arrangements.

Q. When you leave, do you leave any instructions with your salesman?

A. When I leave I just tell my salesmen the business is in their hands, and I expect them to do all they can; the business is in their hands.

Q. Did you ever give any instructions asking them that they compel or demand that customers purchase a plentiful article with scarce commodities?

A. In our business we can't do that. We do not know what is scarce tonight. A freeze came last night—there is an incident—and spinach—

Mr. Burchill: I submit that the question calls for Did he give any instructions?

The Court: I do not think there is any occasion to go into any instructions he gave his salesmen. We are not charging him here with any transaction that involves his salesmen, except perhaps one. I think I will eliminate all [fol. 95] of them except the one where Mr. Silverman has testified that he was present there and directed him to go to Mr. Leef. I think that is count No. 2. You can ask him about any directions to Mr. Leef. I have already indicated we want to try this case and not some other general proposition. Objection sustained.

Mr. Stim: Exception.

The Court: All right, you may have your exception.

Q. Did you at any time wilfully or knowingly evade the provisions of Revised Maximum Price Regulation No. 426 by demanding, making and requiring any of the witnesses who testified here against you, to purchase a plentiful commodity as a condition of the sale to them, as an integral part thereof, of the sale of a scarce commodity?

A No, sir.

Q. Did you ever receive from the Office of Price Administration any instructions concerning the so-called tie-in sales, what you can sell and what you cannot?

Mr. Burchill: I object to the question on the ground that the regulation speaks for itself.

Mr. Stim: Your Honor, on the question of intent.

The Court: Well, step up here. (Let us see what you are driving at.)

(Counsel confer with the Court at the bench out of the hearing of the jury.)

The Court: Objection sustained.

Mr. Stim: Exception.

Q. What directives, if any, did you receive or did the industry receive, if you know, from the War Food Ad-

[fol. 96] ministration for the sale or combination of sales of scarce articles with plentiful articles?

Mr. Burchill: I object.

The Court: That is the same thing. Objection sustained.

Mr. Stim: Exception.

The Court: I understood you to object to it?

Mr. Burchill: Yes.

The Court: The regulation fixes the law, unless you propose to show affirmatively that he received something that was contrary to the regulations?

Mr. Stim: I already stated to your Honor the purpose.

The Court: Yes, you did so.

Q. Do you know of your own knowledge if the Administrator ever granted the request of your industry to find as a fact whether or not the so-called tie-in sales are a violation of the law?

Mr. Burchill: I object.

The Court: Objection sustained.

Mr. Stim: That is all, your Honor.

Mr. Burchill: Would your Honor want me to start tonight?

The Court: Yes, I think you might proceed until half past four.

### Cross-examination.

By Mr. Burchill:

Q. Now, Mr. Shapiro, you testified on direct examination I believe, that it is necessary for you to dispose of all of your merchandise in from four to six hours, is that correct?

A. Try to.

[fol. 97] Q. Well, is that what you testified to, that it is necessary to dispose of your merchandise in that period of time?

A. Yes.

Q. And you use any means available to dispose of it in that time?

A. No, sir.

Q. Is it correct to say that there is a great deal of pressure to dispose of it in that period of time?

A. Well, we try to sell out. This is perishable merchandise. We want to sell out to the best of our ability.

Q. Do you leisurely sit there and take orders?

A. No, we try "What can you use? What do you want?"

Q. Well, that is what I am asking you—

A. We try to sell everybody.

Mr. Burchill: I think if you wait until I put the question we will get along better. You see, I can't hear you when you are talking and I am talking. If we both talk together it is difficult for everybody.

Q. I say, there is a great deal of pressure on during the four to five hours that you are trying to get rid of the merchandise?

A. Sometimes.

Q. Now, in this invoice of Mr. Deroshinsky, I show you Government's Exhibit 16 in evidence, and ask you to look at that exhibit. I believe that is the one that you testified to concerning the fact that the item celery was first?

A. That is right.

Q. And that the man had purchased the celery before the lettuce, is that correct?

A. That is right.

Q. Is that true in every instance?

A. Well, most of the time.

Q. The plentiful item is listed first?

A. Oh, no; whatever commodity the man asks you for.

[fol. 98] Q. Well, isn't it a fact that the reason that that is done is to make sure he buys something else before he gets the scarce item?

Mr. Stim: I object. He is asking for a conclusion.

The Court: Overruled. This is cross-examination.

A. Whatever the man asked for—

Q. Answer the question. Do you know what the question is?

A. No, sir.

(Question read.)

A. No, sir.

Q. I show you Government's Exhibit 4 in evidence, which is the invoice of Schwartz Brothers Company, I believe that is right, and ask you if the same is not true of that invoice as the previous invoice?

A. Yes.

Q. And the same is true of Government's Exhibit 12 in evidence?

A. That is right.

Q. And the same is true of Government's Exhibit 2 in evidence?

A. Here is the celery on here, \$5.50 (indicating). Lettuce is ceiling. The spinach 1.12 $\frac{1}{2}$ , which is about 90 cents lower than the ceiling, or about half. It all depends where the man asks for it how it was put down. Here it is (indicating).

Q. That is what I am asking you about. Isn't it a fact that the lettuce was selling at the ceiling, and wouldn't that indicate it was short?

A. No, they could be selling at the ceiling and still be plentiful.

Q. I ask you whether or not the same is not true of Government's—

[fol. 99] Mr. Stim: Well, what is "the same"? The exhibits are in evidence—

The Court: What do you mean by "the same is true"?

Mr. Burchill: That the plentiful item, as testified to by the Government, is listed first and the scarce item is listed secondly.

The Court: I do not think the question is proper. There is no difficulty in pointing out the item referred to. There may be a dispute.

The Witness: I wouldn't know offhand right here (indicating).

Q. Isn't it a fact that the price is some indication of whether or not a commodity is scarce or plentiful?

A. Well, we will take the "S. & I." Your lettuce is a scarce item and everything else is not. Each bill is different, just depending upon how the man asked for the merchandise. Let us take the bills.

Q. Suppose you answer my questions and let me run it.

A. I will, sir.

Mr. Stim: He is getting the answer.

Mr. Burchill: Do you want to testify, Mr. Stim?

Mr. Stim: No, I have a right to intervene on behalf of my client.

Q. Now, you also testified on direct examination, I believe, that you can't compel anybody to buy anything.

A. Positively.

Q. But if they do not buy a plentiful item they do not get the scarce item?

A. They will get the scarce item if I have it. They sure will.

[fol. 100] Q. If they do not buy, according to your terms, they do not have to buy at all, is that correct?

A. Oh, no. I am not in business for 28 years for that. That is the way I built my business up, to be honest about it.

Q. You testified there were 253 merchants similar to yourself.

A. About that.

Q. On a day a commodity is scarce do each of those 253 merchants have the scarce commodity?

A. I do not know how many have it.

Q. Well, you testified on direct examination that they could go to any one of the 253 and buy what you had.

A. There is 252 merchants in the market.

Q. Did you testify on direct examination that any of these customers who were Government witnesses could go to any one of the 253 merchants in the market and buy the same items they had bought from you on the particular day in question?

A. I do not know exactly—

Q. Did you testify to that?

A. I testified.

The Court: Let him answer.

A. (Continuing:) I testified there were 252 merchants in the market and we all handled practically alike. I do not know what the other people have. I know that I have.

Q. Did you testify that the Government witnesses could have bought scarce commodities that they bought from you on a particular day from anyone of the other 253 merchants in that market on that day?

A. I do not know what they have.

Q. Did you testify to that?

A. I testified it was 252 merchants that were—

Q. And that these Government witnesses could have bought it from anyone of the 253 merchants in the market?

A. I still do not know what they are doing.

[fol. 101] Q. Did you testify to that?

A. I do not know.

Q. Could they?

A. Certainly if they have it. Why not?

Q. Do each of the 253 other merchants have scarce commodities every day, the ones that you had?

A. Everybody looks at their business.

Q. Will you answer the question?

A. I do not know what the other people do.

Q. You do not know. That is the answer?

A. I do not know what they do.

Mr. Burchill: That is right. You do not know.

Q. Suppose ten carloads of a particularly scarce commodity comes in, how many receivers get those ten carloads?

A. I wouldn't know.

Q. How many would you get?

A. It all depends.

Q. You have been in the business for 28 years; you have seen ten carloads come in at a time.

Mr. Stim: I object to that. We are going into the realm of speculation.

The Court: Objection sustained.

Q. You have testified on direct examination, I believe, that Mr. Doreshinsky returned some goods to you; is that correct?

A. I do not remember testifying to that.

Q. Well, maybe I misunderstood you.

A. I said he could have if he wanted to. I wouldn't know whether he did or not.

Q. Would you know whether or not anybody else had returned any?

A. I do not know, but we have records of anybody returning.

[fol. 102] Q. You have the records?

A. Oh, certainly. Plenty of merchandise is returned daily when they do not like it.

Q. Of scarce and plentiful items?

A. Everything. Plenty of it.

Q. Now, I show you Government's Exhibit 2 in evidence concerning which you testified that the entire transaction was held or handled by Mr. Leef; is that correct?

A. That is right, sir.

Q. I believe you also further testified that it would be impossible for a salesman's initials to appear, or for you to have handled that transaction if your initials did not appear on the invoice?

A. That is right, sir.

Q. Now, will you tell us why that is impossible?

A. Because, when we gave our sales ticket upstairs to the bookkeepers when they made out the bills the same day as the sales are made——

Q. That is a different floor?

A. Yes. We leave our books, and this is made out maybe nine, ten, eleven, twelve, or maybe two in the afternoon by a billing clerk.

Q. The same day the sale is made?

A. Yes, it is made the same day that the sale is made. They are put off the salesman's book with his initials alongside, the amount of packages——

Q. Are you talking about this invoice?

A. No, sir.

Q. Well, this particular one?

A. Well, this would be Mannie Leef sold on December——

Q. Well, I understand what the invoice says. The jury can read it.

A. (Continuing:) —ten celery. The reason it is Mannie Leef, if there is any complaint or returns, if there is any dispute about the price or anything, we know which salesman is the one; and everyone of our bills will show a salesman's initials on it.

[fol. 103] Q. First of all do I understand you correctly——

A. Can I explain further?

Q. Please.

The Court: If there is a further explanation he may make it.

A. (Continuing:) There is another reason that we have to have the initials, when we make out our sales tickets we never put a price on it. We always put the price on it late in the morning when all the sales are done, so in case there is any dispute on the prices we know which salesman to go to; therefore I cannot sell a man and tell one of my salesmen to make out a ticket. He wouldn't know the price I sold it for.

The Court: We will suspend here, gentlemen.

Ladies and gentlemen, during the recess of the court do not discuss this case among yourselves and do not permit anybody to discuss it with you, and do not make up your minds about it until it is finally submitted to you.

We will recess until 10:30 tomorrow morning.

(Adjourned to December 18, 1945, 10:30 o'clock a. m.)

New York, December 18, 1945, 10:30 a. m.

Trial resumed.

WILLIAM SHAPIRO, resumed the stand.

Cross-examination.

By Mr. Burchill (Continued):

Q. I believe you testified yesterday, Mr. Shapiro, on direct examination, that OPA investigators worked in your [fol. 104] place of business for seven to ten days and found nothing wrong, is that correct?

A. Yes.

Q. And that they had all of your records available to them?

A. Yes.

Q. And you produced everything for them and were very cooperative, is that correct?

A. Yes, sir.

Q. I believe you also testified that you had a complete and accurate set of books and kept all records required by the Office of Price Administration?

A. That is right.

• GEORGE J. REDDEN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Stim:

Q. Mr. Redden, where do you live?

A. Red Bank, New Jersey.

Q. Are you in business in New York City?

A. Yes.

Q. What is your occupation?

A. I am perishable agent for the Baltimore & Ohio Railroad.

Q. How long have you been in that position?

A. About 22 years.

Q. Do you know the defendant William Shapiro?

A. About nine years.

Q. And during that time did you have occasion to know people who know him?

A. In the trade, yes, sir.

Q. And did you have occasion to discuss with these people Mr. Shapiro's reputation for honesty, integrity and truth telling?

A. Yes, sir.

Q. And what is that reputation?

A. We always found it to be excellent.

[fol. 105] Mr. Stim: That is all.

Mr. Burchill. No questions. Your Honor, may we approach the bench, please?

The Court: Yes.

(Colloquy between Court and counsel at the bench.)

(Whereupon Court and counsel retired to chambers, where the following occurred:)

Mr. Stim: Your Honor, the defendant wishes to offer testimony of a number of merchant customers who purchased merchandise from him during the same period as covered by the informations during the identical days involved here, who will testify to the fact both by their own testimony and documentary evidence we have, of the identical days in which the defendant is charged with compelling some of the witnesses to purchase plentiful articles on condition of buying scarce articles, and that these witnesses purchased scarce articles without the requirement of buying plentiful articles, and they will further testify that there never was any compulsion in dealings with the defendant.

Mr. Burchill: I object to the offer of such testimony on the ground that it is irrelevant and has nothing to do with the issues in the case as charged in the information.

The Court: The objection will be sustained and exception allowed.

Mr. Stim: Exception.

(Argument off the record.)

The Court: Let the motion to dismiss count No. 2 be sustained.

#### MOTIONS TO DISMISS

Mr. Stim: Your Honor, at the end of the Government's case I made certain motions, and now, at the end of the entire case, I renew all the motions I heretofore made with the same force and effect as though made in detail at this time.

[fol. 106] The Court: Overruled insofar as motions made, except as to count number 2.

Mr. Stim: Exception.

Your Honor, I further move to dismiss the information on the ground that the Government has failed to show that any of the commodities involved in the transactions which are before the jury above price ceilings or what the price ceilings are, and whether or not there was any violation of the price ceilings. I submit that is a question of fact and not a question of speculation for the jury.

Mr. Burchill: It is a question of law.

The Court: Overruled.

Mr. Stim: Exception.

With all respect to the Court, I may say that a serious error was made in that the Government has failed to prove the regulations. While the Court may take judicial notice of a law, I don't think the Court can take judicial notice of the regulations.

(Court and counsel returned to the courtroom.)

The Court: Ladies and gentlemen of the jury, I sustained the defendant's motion to dismiss as to count number 2; that is the count which related to Mr. Silverman's transaction; not with the defendant Shapiro but with one of his salesmen, Mannie Leef. It is my opinion that there was not direct proof of Mr. Shapiro's participation in that sufficient to justify submitting that to the jury, and that is eliminated.

Does that close your case?

Mr. Stim: Your Honor, the defendant rests.

The Court: Anything further?

Mr. Burchill: No rebuttal, if your Honor please.

The Court: You may proceed with your argument.

(Mr. Stim summed up the case to the jury on behalf of the defendant.)

(Mr. Burchill summed up the case to the jury on behalf of the Government.)

[fol. 107]

#### CHARGE OF THE COURT

The Court: Ladies and gentlemen: In your consideration of this case, the responsibility comes to me to see to it, as far as I can, that you understand, at the outset, the nature of the charges that are made here against this defendant; in other words, that you may understand what the applicable law is. I hope, if there is any confusion or doubt in your minds as to the law, you will frankly and candidly ask me about it, because we don't want any doubt about your clear and accurate understanding of the nature of this problem;

In the first place, under the laws of the United States, the Office of Price Administration adopted a regulation which is known as No. 426. That regulation was in force during the periods involved in this case. It effects certain price limitations upon the commodities, fruits and produce, that are referred to in this case. It made a further provision that I want to read to you in order to clarify it for you, if there is any doubt about this that requires clarifying:

"The price limitations which are set forth in this regulation shall not be evaded, whether by direct or indirect methods, in connection with any offer, solicitation, agreement, sale, delivery, purchase or receipt, or relating to fresh fruits or vegetables alone or in conjunction with any other commodity, or by way of commission, service, transportation or any other charge or discount, premium or other privilege or by tying agreement or other trade understanding or otherwise."

That regulation has for its purpose a prohibition of direct or indirect methods of evading the price limitations.

[fol. 108] Now, this information charges that this defendant at various times evaded the provisions of this price regulation by doing certain things, by demanding and requiring that in order to purchase one or two commodities that the purchaser desired, they should take other commodities that they did not desire and that they did not seek, and by so doing he brought about an evasion of the price limitation by securing, in addition to the price of the articles the purchaser wanted, the sale of additional articles that he did not want.

Now I do not mean to say to you that this regulation prohibits the sale of numerous articles at one time. That is not the point. In the ordinary and reasonable course of business, a merchant can sell by appropriate and fair means all that a man will buy from him, and this regulation does not deny that right, and it would be ridiculous to deny such a right. The merchants who have commodities on hand which are perishable naturally want to get rid of those articles and there is nothing in this regulation which prohibits or tends to prohibit or is designed to prohibit the sale of those articles in combination with scarce articles, provided it is a sale without compulsion. That is, without requiring or demanding it as a condition that the purchaser procure what he wants or what he needs. The regulation is directly and specifically clear against the evasion of the price limitation by forced sales as a condition or in combination with other things. I want to make this clear that the issue in this case is whether certain commodities were forced upon these persons in that they were required to buy them in order to get the commodities which they wanted to purchase.

When I use the word "forced" or the word "compulsion," I don't mean physical force. I am sure you understand that. The regulation is not directed to that. [fol. 109] It is not limited to that. I don't mean that a man is coerced by taking him by the throat and compelling him to take it. There is a lot of difference between a physical force or coercion and business coercion. Business coercion, nevertheless, may be just as effective in accomplishing its purpose as physical coercion. A man is in business. He needs a certain commodity in his business. He comes to this man for this commodity and finds that he has it. Now, if he says to him "If you take this, you have to take this along with it." There is in that trans-

action a form of business coercion and that is what this regulation is directed to, and that character of transaction is what is charged. That is all that is charged here. It is charged that it is a demand, and that as an integral part of the sale of one commodity the purchaser was required to take one or more additional commodities, and if that is true, under the evidence that you have heard, this defendant should be found guilty, provided your conviction of the truth is established by the evidence beyond a reasonable doubt.

The mere fact that a man is charged with an offense is not proof of it; the information itself is not proof of anything. It is merely a definition of the charge that is made, and the fact that there are a large number of counts in the information, many of which I have dismissed, is a matter of no significance to you now because you are to concern yourselves only with those particular counts that are left. You will notice that the counts that are submitted to you, eleven of them, are counts in which the witnesses for the Government testified that they had the transaction directly with the defendant Mr. Shapiro.

There are a large number of other counts in which the witnesses were not definite in their statements or in which they said they transacted the business with somebody else, [fol. 110] some clerk or somebody besides Mr. Shapiro. I have eliminated all of those so we may narrow the question down to the counts on which the evidence is direct and on which the issue is squarely and cleanly made as to whether the man violated this regulation, that is, whether Mr. Shapiro violated this regulation in the manner charged in these counts.

Now, before you can find him guilty on any one of them, the evidence must satisfy you of his guilt beyond a reasonable doubt. Reasonable doubt means exactly what it says. The evidence must be sufficiently satisfactory to enable you to have a settled and satisfied opinion that he is guilty. Of course, absolute proof to a certainty beyond all peradventure of doubt is not required and is not expected. That is not what reasonable doubt means. Reasonable doubt means a doubt having a reasonable and sound foundation either in the evidence or the nature of the evidence or lack of evidence and it must be such a doubt that interferes with your reaching a satisfactory conclusion. So much for the reasonable doubt. If you

have a reasonable doubt with respect to any of these counts or with respect to the evidence, he is entitled to the benefit of that doubt and he should be acquitted on the count or counts as to which that doubt may exist.

Before I come to a discussion of all the counts in the information, I might appropriately make some reference to the fact that there has been some evidence introduced here on the good reputation of the defendant. The man is charged with violating a law and he is entitled in his own behalf to introduce proof of his good reputation. Good reputation is a most valuable asset, and it is sometimes the only asset a man has outside of his own testimony in a case. It may sometimes be sufficient in close cases to turn the scales in favor of the defendant to generate a sufficient doubt or reasonable doubt. As to what weight is to be given to the testimony here as to reputation, the Government points to the fact and has a right to point to the fact that it comes largely from his dealers in other States, persons who have been serving his extensive business. All of that is a proper matter for your consideration so as to determine what weight should be attributed to that evidence, and I am leaving that entirely to you without any expression of opinion on it or any comment on it. You are experienced men and women, and with that statement as to the law of this case, I want to narrow the questions down to just the issues involved in each of these counts and see if we cannot simplify for ourselves our consideration of them.

The first count charges a transaction that took place on the 20th day of November, 1943, between Mr. Silverman and Mr. Shapiro himself. Now, as in all of these counts, a good many of the facts are not disputed. It is not disputed that that transaction took place. It is not disputed that on that occasion Mr. Silverman purchased the commodities that are stated in the information. It is not disputed that he paid the prices that were charged him, and Mr. Shapiro does not dispute that he conducted the transaction with Mr. Silverman as set out in the information. Where then is the dispute? What is the trouble? Mr. Silverman contends that he was coerced and was required to take something that he didn't want and that he was required to do it in order to get something that he did want. Mr. Shapiro says no, he didn't make any such requirement? He says, "I just had these perishable goods on my hand."

and I said in the regular course of business, 'What else do you want?' That is the way I sell my goods. That is the only way I urge people to take it. I wanted to sell it and [fol. 112] I do not argue with a man and urge him to buy something else in addition to what he called for."

How are you to decide where the truth lies? It is sometimes very hard to tell who is telling the truth. I will comment on a method we might adopt in that respect when I get through with these counts.

The third count in the indictment is another transaction between Mr. Silverman and Mr. Shapiro—I am mistaken about that—the next count is the count in which it is stated that Mr. Shapiro, or it is charged that Mr. Shapiro evaded the provisions of this regulation by requiring J. Simensky & Company to purchase certain commodities as an integral part of a transaction that is described here in this count. I think you ought to read these counts pretty carefully. That count is supported by the testimony of a man named Deroshinsky, as I recall his name. I had a good deal of difficulty with these names because I am not familiar with them. Now, Mr. Deroshinsky testified very positively that Mr. Shapiro said "You have got to take these other things in order to get the commodity" that he demanded. The issues there are sharply drawn. Mr. Deroshinsky and Mr. Shapiro, as we readily observe, are not very friendly. Mr. Shapiro's testimony is squarely in contradiction of him. He says that he did not have a transaction with him and that he had not had any business transactions with him for years. According to his statement, Mr. Deroshinsky is very positive in his statement as to what took place. You will have to determine who is telling the truth about that.

Then there follow five counts, 7, 8, 9, 10 and 11, that concern Mr. D'Avino in those transactions. They took place on the 20th of August, 1943, 28th of August, 1943, 30th of August, 1943, 10th of September, 1943, and 19th of November, 1943.

[fol. 113] Mr. D'Avino testified that he had the transactions described in these counts with Mr. Shapiro himself; that he went to buy a certain commodity as set out in this count, and Mr. Shapiro demanded that he take other commodities that D'Avino didn't want, and said you have got to take that with the others. The question is whom to believe. That is all. It narrows down to a very simple issue. I mean it is simple to describe to you the issue, but

not a simple issue to decide. Now, it is just a question whether Mr. Shapiro is telling the truth or whether Mr. D'Avino is telling the truth. Mr. Shapiro denies it. He said, "I merely urged the sale of my commodities by asking what they wanted in addition and that is all I did, in a fair business-like way." That is his defense to each of these charges.

Then we follow with counts 42, 43, 44, and 46, which are supported by the Government witness Mr. Anthony Bentivenga—that is about as near as I can get to it—you may call it something else but I am sure you will remember the gentleman. He was the man, as I recall, who was buying for the Schwartz people. He was an employee of the Schwartz Produce Company and Mr. Schwartz or whoever it was who usually did the buying was sick and Mr. Bentivenga was buying in his place during his illness, on the 6th of September, the 13th of September, the 15th of September, and the 29th of September, 1944, and he testifies that on each of those occasions Mr. Shapiro had the transaction with him, and the substance of his testimony was that Shapiro demanded and required, in order that he get certain commodities that he wanted, that he should take these other commodities there specified in these counts. Mr. Shapiro says it is untrue and that he did no such thing; he didn't demand or he didn't require it and he did not compel [fol. 114] it and he did not make the condition of purchase, he merely urged as an ordinary business transaction, as any salesman would urge the sale of his commodities on a prospective purchaser. So we have the issue very narrowly drawn as one of credibility. If the facts are as these witnesses for the Government have stated, as to any of these counts under the law, if you believe those to be the truth, beyond reasonable doubt, as I have defined it, it is your duty, whether you agree with the policy of the law or not, it is your duty as jurors to find the defendant guilty. But if you have a reasonable doubt as to any of the counts, the counts as to which that doubt may apply should be dismissed and the defendant should be acquitted under them, because he is entitled to the benefit of the doubt. The burden rests on the Government throughout the case to establish guilt beyond a reasonable doubt and that burden never shifts to the defendant to prove his innocence. The Government throughout must carry the burden of proving the guilt of the defendant. What I have said to you regard-

ing the law in the case is binding upon you, of course. I am the only source from which you can get information as to the law applicable to the case. As to the facts, you are the sole judges. I may comment on them and I may undertake to narrow the issues down for you and assist you in arriving at what the truth is, but you don't have to accept that assistance if you don't want to, and if you feel it is really not of any assistance to you, you need not consider it. You will be the judges entirely of what consideration you should give to the comments I give you in the case.

As I view the case, the dispute remains as to whether D'Avino, Deroshinsky, Silverman and the other Government witnesses are telling the truth about the transactions that they had here in so far as they say they were required [fol. 115] by Mr. Shapiro to take commodities which they did not order and did not want in order to make a purchase of commodities which they did want, or is Mr. Shapiro telling the truth when he says, "I did not compel or require or demand that they take these commodities and they bought them of their own free will," and he only did what any good salesman would do in trying to sell his goods, that is all.

I always sympathize with a jury when it has to decide who is telling the truth, in a case where one man says one thing and the other man tells the opposite. How are we going to do it? I don't know a better way to decide a matter like that than to leave it to twelve experienced men and women. I am a great believer in a jury trial on the facts where credibility of witnesses is the turning point. I believe that men and women who have gone up and down in this world and have rubbed up against their fellow men, have seen their conduct, can judge their motives by their actions, by their interest involved—all those things that might determine the credibility of a man's testimony. I believe jurors taken from a large community, a sort of cross-section of the country, men and women who have had experience, are peculiarly capable of doing it. I do not undertake to lay down any rule of thumb as to how it is done or should be done. You have a right to judge from seeing a witness on the witness stand, from hearing him talk, from observing his conduct, from observing his responses to questions, determining whether he has any interest at stake; has he any axe to grind that should cause him to tell a falsehood? What is his interest in the case?

We have had men who were summoned by the Government. Have they any interest in the case sufficient to cause them to tell a falsehood? Can you give weight to what they say? [fol. 116] You have a right to consider whether a man is in any way motivated to make a false statement. It is obvious that both these statements cannot be true, that is, those testified to by the Government witnesses and those testified to by or on behalf of the defendant Shapiro. It has to be one or the other. Of course, the defendant must subject himself to the same test that these other witnesses are subjected to. Has he got any interest here? Is there any motive that would induce him to deny that he made those statements to these witnesses if he did make them? What has he at stake that would motivate him to tell a falsehood?

I have no further suggestions to make, ladies and gentlemen, as to how to determine what is the truth in this case, and upon your shoulders and your consciences under your oath rests the vital and important duty in this case to decide where the truth lies. Whatever I have said to you is not done with any purpose to influence you improperly or unduly control your judgment but merely to assist you in reaching a just and righteous verdict in determining what the real truth is and what the true facts are.

A unanimous verdict is necessary on each count of the information. I have taken out of the information those counts which were dismissed, so as to leave only here the particular counts on which you are to render your verdict and, of course, a careful examination of these charges will be entirely appropriate and I think necessary in order for you to reach a determination with regard to each of them.

Gentlemen, have you any suggestions as to further instructions?

Mr. Burchill: I have no suggestions.

[fol. 117] . REQUESTS AND EXCEPTIONS

Mr. Stim: May I respectfully ask your Honor to charge with request No. 1 of my Requests to Charge?

The Court: I think the request has been sufficiently covered in the instructions already given.

Mr. Stim: May I have an exception to your Honor's ruling?

The Court: All right.

Mr. Stim: Will your Honor be good enough to charge No. 6?

The Court: I think I have already covered that point. There is nothing in the regulation that prohibits the sale of commodities together in combination with each other unless there is some coercion involved. I decline to give the instruction as you have written it.

Mr. Stim: Exception.

I respectfully ask your Honor to charge No. 8.

The Court: Declined.

Mr. Stim: Exception.

I respectfully ask your Honor to charge No. 10.

The Court: Declined.

Mr. Stim: Exception.

I respectfully ask your Honor to charge No. 11.

The Court: Declined.

Mr. Stim: Exception.

No. 12.

The Court: Declined.

Mr. Stim: Exception.

No. 14, your Honor.

The Court: Declined, in the terms suggested. I have already covered the same facts in my charge.

Mr. Stim: Exception.

No. 15, your Honor.

The Court: Declined. I don't see any occasion to charge that.

[fol. 118] Mr. Stim: Exception.

No. 18.

The Court: I will give that instruction. Where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the jury to acquit.

Mr. Stim: No. 19, your Honor.

The Court: No. 19. I see no reason why I should not say to the jury that that is the law of the case, and it is this: As the verdict of the jury must represent the real opinion and judgment of each member of the jury, no juror should acquiesce in the verdict against his individual judgment.

I will qualify that by saying that no juror should set himself up so as not to be willing to listen to reasonable arguments of his fellow jurors and take an arbitrary position without listening to fair argument from your fellow jurors. Of course, in the ultimate determination of these matters, however, each juror is bound by his own conscience under his oath to do what he thinks is right and proper.

Mr. Stim: May I, your Honor, make my requests as part of the record.

The Court: Yes.

Mr. Burchill: The Government has no objections to the charge.

The Court: Ladies and gentlemen, you may retire.

(The jury retired to deliberate.)

(The following occurred in chambers:)

The Court: Gentlemen, the jury have just submitted a note reading as follows:

"Please submit the transcript of minutes of the testimony on counts 7, 8, 9, 10, 11."

[fol. 119]

#### DISCUSSION

Is there any objection to my reading the testimony of Mr. D'Avino?

Mr. Stim: No objection.

Mr. Burchill: No objection.

(The jury returned to the court room at 3:10 p.m.)

The Court: Ladies and gentlemen, I received your request for the transcript of minutes of the testimony referring to counts 7, 8, 9, 10 and 11, and the attorneys have agreed, and I concur with them, and I will read the testimony to you upon those counts. Those counts are the counts in reference to the testimony of Mr. D'Avino, and if you will give it your careful attention I will read you the testimony of Mr. D'Avino.

(The Court read testimony of witness D'Avino.)

Mr. Stim: Would your Honor be good enough to refer to page 173?

The Court: I will read whatever you point out to me as having any bearing.

Mr. Stim: There is a question here:

"Q. Will you tell the Court and jury what is your best recollection of the conversation that you had with D'Avino?"

The Court: All right. I am reading now as pointed out by Mr. Stim, page 173, testimony of Mr. Shapiro on direct examination.

(The Court reads record.)

Mr. Stim: I think the next one goes to Simensky.

The Court: Is there anything further?

Mr. Stim: That is all, ~~your Honor~~, on the testimony of D'Avino.

The Court: Ladies and gentlemen of the jury, that concludes the testimony.

The Forelady: Thank you very much, your Honor.

(The jury retired at 3:30 p.m. to deliberate.)

{fol. 120]

### VERDICT

(The jury returned to the court room at 3:45 p.m.)

The Clerk: Will the jurors please answer when your names are called?

(Jurors answer to their names as present.)

The Clerk: Madam Forelady, have you agreed upon a verdict?

The Forelady: Yes, we have.

The Clerk: How say you?

The Forelady: We, the jury, find the defendant not guilty on counts 1, 3, 42, 43, 44 and 46; and we find him guilty on counts 7, 8, 9, 10, and 11.

The Clerk: Members of the jury, listen to your verdict as it stands recorded. You say you find the defendant not guilty on counts 1, 3, 42, 43, 44 and 46.

The Forelady: That is right.

The Clerk: And guilty on counts 7, 8, 9, 10 and 11.

The Forelady: That is right.

The Clerk: And so say you all.

Mr. Stim: May I have the jury polled?

The Clerk: Listen to your verdict as it stands recorded. You say you find the defendant not guilty on counts 1, 3, 42, 43, 44 and 46, and that you find the defendant guilty on counts 7, 8, 9, 10 and 11.

(The clerk polled each individual juror who answered in the affirmative.)

The Court: Let the verdict be entered.

That concludes the services of the jury in this case, Mr. Clerk.

The Clerk: Yes. Please return to room 109.

The Court: Thank you very much, ladies and gentlemen of the jury.

Mr. Stim: Your Honor, can we dispose of the motions here?

The Court: Yes.

[fol. 121]

# VERDICT

Mr. Stim: I move to set aside the verdict as being against the weight of the evidence and contrary to law and against all of the evidence in this case.

The Court: The motion is overruled.

Mr. Stim: Exception.

May your Honor proceed with sentence now?

The Court: Yes, I will do that now just as well as any other time.

Mr. Burchill: I have not discussed the matter of sentence with the office, and I am bound as far as the rules of my office are concerned to discuss it with them before—

The Court: Suppose we do that.

Mr. Stim: In view of the fact that the case has been disposed of, your Honor should proceed with the sentence now.

The Court: What is the hurry?

Mr. Stim: I have been tied up with this case for weeks and I am going on trial in several other cases. It seems to me your Honor has all the facts fresh before him and I do not believe it would be against the interests of justice if your Honor disposes of the situation now.

The Court: No, I do not think so. I do not think there would be anything against the interests of justice about it, but where the prosecution is handled by the assistant to the Department I shall give him the opportunity of discussing it with his superior in order to consider any recommendations he desires to make. I think that is the appropriate thing to do.

How much time?

Mr. Burchill: Tomorrow morning will be all right.

The Court: Can you see them this afternoon?

Mr. Burchill: Will you give me 15 minutes?

The Court: Suppose we pass the matter until 4:15.

Mr. Burchill: Yes.

(Adjourned to 4:15 p.m.)

[fol. 122] **DEFENDANT'S REQUEST TO CHARGE**

(Defendant William Shapiro respectfully asks the Court to charge as follows):

1. A conviction cannot be had upon strong suspicion or probabilities of guilt, nor as in civil cases upon a mere preponderance of evidence, but guilt must be established beyond a reasonable doubt.
2. While evidence of a crime may be circumstantial and inferential in its character, it must always rise to that degree of convincing power which satisfied the mind beyond a reasonable doubt of guilt. This can never be the case when the evidence which is produced is entirely consistent with innocence in a given transaction.
3. The defendant is presumed to be innocent until his guilt has been established beyond a reasonable doubt.
4. Evidence to warrant conviction must, when considered by the jury, exclude beyond a reasonable doubt every other hypothesis than that of defendant's guilt.
5. The defendant is innocent of the charges against him alleged in the informations unless proven to be guilty by the Government beyond a reasonable doubt. The burden of proving the guilt of the defendant is on the Government; that burden never shifts; the defendant need not prove his innocence; that the burden is with the Government to prove beyond a reasonable doubt that the defendant did affirmatively compel his customers to purchase from him or from his salesmen plentiful commodities as a condition before selling them scarce commodities.
6. The mere refusal by the defendant to sell to any of his customers a scarce commodity or any commodity is in [fol. 123] itself no violation of the Emergency Price Control Act. Only if the sale of such scarce commodity is accompanied by coercion to purchase in combination with the sale of such scarce commodity a plentiful commodity does a violation occur.

“Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.”

7. There was evidence introduced as to the established custom and practice of the wholesale produce business, a usual method of selling scarce commodities in combination with plentiful commodities at certain seasons of the year. The mere selling of a scarce commodity in combination with a plentiful commodity is not a violation of the law.

"The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, or changes in established rental practices, except where such action is affirmatively found by the Administrator to be necessary to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act."

8. I charge you as a matter of law that the powers granted by Congress to the Office of Price Administration by the Emergency Price Control Act were not to be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, or changes in established rental practices, except where such action is affirmatively found by the Administrator to be necessary to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.

9. I charge you that there has been no evidence introduced by the Government to the effect that the Price Administrator has found affirmatively that the custom and practice in the produce industry requiring a customer to purchase a plentiful commodity as a condition of the sale to such customer of a scarce commodity, had the effect of circumvention or evasion of any regulation, order, price schedule or requirement of the Emergency Price Control Act, and therefore, if you find that the tie-in sales testified to by witnesses for the Government were the result of a long established custom and practice in the wholesale produce industry, such sales were not in violation of the Emergency Price Control Act and the defendant must be acquitted.

10. The mere fact that any of the witnesses for the Government believed that in order to purchase a scarce

commodity they would have to purchase a plentiful commodity as a condition, and acted in that belief, is not sufficient to spell out a violation of the law.

11. The defendant William Shapiro is accused of having evaded the provisions of Revised Maximum Price Regulation No. 426, by demanding, making and requiring certain merchants to purchase a commodity which was plentiful at that time as a condition of the sale to these merchants, and as an integral part thereof, of another commodity which was scarce. It is my duty to instruct you that if the evidence fails to establish beyond a reasonable doubt that any of these merchants, in order to obtain the [fel. 125] purchase of the scarce commodities, were required, compelled and coerced by the defendant William Shapiro to purchase the plentiful commodities, then it is your duty to find the defendant William Shapiro not guilty.

12. If you find from the evidence, beyond a reasonable doubt, that any of the merchants who testified were required, compelled and coerced by the said William Shapiro to purchase plentiful commodities in order to acquire scarce commodities, then it is your duty to inquire further whether the said requirement and compulsion resulted in the payment by any of these merchants of a price in excess of the maximum price permitted to be charged under the Price Control Regulations for any of these commodities. Unless you find beyond a reasonable doubt that as a result of said requirement and compulsion the merchants who testified, or any of them paid and the defendant William Shapiro received for the said commodities a price in excess of the said maximum price, it is your duty to find the defendant not guilty.

13. There was evidence received of certain conversations had between the witnesses who testified for the Government and salesman employed by the defendant William Shapiro. I charge you as a matter of law that unless you find beyond a reasonable doubt that the defendant William Shapiro specifically instructed any of his salesman to require, compel and coerce any of the merchants who testified, to purchase a plentiful commodity in order to obtain the purchase of a scarce commodity, and unless you further find that the said requirement and compulsion resulted in the payment by the merchants who testified for

the Government, or any of them, to the defendant William Shapiro of a price in excess of the maximum price per- [fol. 126] mitted to be charged under the Price Control Regulations, then such conversation between the salesman and the particular merchant is not binding upon the defendant William Shapiro and it is your duty to find the defendant not guilty in connection with any such transactions.

14. The denial by the Court of the motions to dismiss the information at the close of the Government's case and at the close of the entire case is not to be taken by the jury as an indication of the guilt or innocence of the defendant. The Court has no opinion as to the guilt or innocence of the defendant, and expresses no opinion with reference to the same. The denial of such motions was merely denial of motions upon questions of law.

15. If the jury finds that a witness testified falsely to any material fact, they have a right to disregard that part of the testimony which they find to be untrue and accept the balance of the testimony that they believe, or they have the right in such a situation to disregard all of the testimony of such a witness, irrespective of whether or not they believe some part or parts of it.

16. The return of informations against the defendant is no evidence whatever of guilt. The presumption of innocence means that at the beginning of the trial he is innocent of the charges, and that presumption continues to abide with him as a complete protection, unless and until it gives way because inconsistent with the existence of a situation proved by the evidence in the case beyond all reasonable doubt.

17. There is required such proof as would satisfy the judgment and consciences of the jury that the crime charged [fols. 127-128] had been committed by the defendant, and so satisfy them as to leave no other reasonable conclusion possible.

And, if, after an impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied of the defendant's guilt, you then have a reasonable doubt and must acquit.

18. Where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the jury to acquit.

19. As the verdict of the jury must represent the real opinion and judgment of each member of the jury, no juror should acquiesce in the verdict against his individual judgment.

20. The jury in determining the guilt or innocence of the defendant of the offense charged in the informations, can consider only the evidence of the case and are to disregard any statement made during the course of the trial by counsel, not supported by evidence, and they are not to be influenced or governed by any expression of opinion or action of counsel, unless the same can be deduced from the evidence.

21. The defendant has offered evidence of good character. Good character in itself may generate a reasonable doubt, sufficient to warrant a finding of not guilty.

## GOVERNMENT'S EXHIBIT 12.

TELEPHONE WALKER 2 3460  
3462POSITIVELY NO ALLOWANCES  
Price Tickets may be obtained from salesman  
at time of purchase

SHIPPING NO 318

**WILLIAM SHAPIRO.**

Commission Merchants

**FRUITS AND PRODUCE**

364 WASHINGTON STREET

New York

EXHIBIT  
U. S. Dist. Court  
S. D. of N. Y.  
SEP 12 1945

AUG 20 1943

SOLD TO D'AVINO BROS

TERMS NET CASH. BILLS MUST BE PAID WEEKLY

| REFERENCE | DATE | ARTICLES    | PRICE | MERCHANDISE | CARTAGE | CONTAINERS | TOTAL  |
|-----------|------|-------------|-------|-------------|---------|------------|--------|
| 80        | 80   | 10 POTATOES | 4 50  | 45 00       |         |            |        |
|           |      | 10 PEAS     | 3 50  | 35 00       |         |            |        |
|           |      | 10 LETTUCE  | 5 29  | 52 90       |         |            |        |
|           |      |             |       |             |         |            | 132 90 |

M. C. S.  
222 WARREN ST.  
NEW YORK CITY.EXHIBIT 12  
U. S. COURT

DEC

**NOTICE:**

Positively no credit for merchandise returned to us, or allowance of any kind will be given unless a price ticket or credit memorandum is attached which must be obtained from salesman authorizing same.



# GOVERNMENT'S EXHIBIT 13.

Telephone William S. 2-220  
2-224

POSITIVELY NO ALLOWANCES  
Price Tickets may be obtained from columns  
at time of purchase.

SHIPPING NO. 218

**WILLIAM SHAPIRO.**  
Commission Merchants  
**FRUITS AND PRODUCE**  
364 WASHINGTON STREET  
NEW YORK.

When goods are shipped and  
received for in good order  
by Government Commission, our  
responsibility ceases and same  
are forward at purchaser's risk

*Exhibit*  
**EXHIBIT**  
U. S. Dist. Court  
S. D. of N. Y.  
**SEP 12 1945**

**SOLD TO** D'AVINO BROS.

TERMS: NET CASH BILLS MUST BE PAID WEEKLY

*AUG 28 1943*

| REFERENCE | DATE | ARTICLES    | PRICE | MERCHANDISE | CARTAGE | CONTAINERS | TOTAL                |
|-----------|------|-------------|-------|-------------|---------|------------|----------------------|
| WS        | 28   | 10 PEAS     | 3 50  | 35 00       |         |            | 103 28 <sup>00</sup> |
|           |      | 5 CA. ROOTS | 6 25  | 31 25       |         |            |                      |
|           |      | 7 LETTUCE   | 5 29  | 37 03       |         |            |                      |

EXHIBIT  
U. S.

DEC

*M. C. S.*  
103 WASHINGTON ST.  
NEW YORK CITY

## **NOTICE**

Positively no credit for merchandise returned to us, or allowance of any  
kind will be given unless a price ticket or credit memorandum is attached  
which must be obtained from columns authorizing same



101

# GOVERNMENT'S EXHIBIT 14.

TELEPHONE WALKER 5-3403  
3404

POSITIVELY NO ALLOWANCES  
Price Factors may be obtained from columns  
at time of purchase.

**WILLIAM SHAPIRO.**  
Commission Merchants  
**FRUITS AND PRODUCE**  
364 WASHINGTON STREET  
NEW YORK.

When goods are shipped and  
received for in good order  
by Transportation Company, our  
responsibility ceases and same  
is forward to purchaser's risk.

SHIPPING NO. 315

U. S. Dist. Court

S. D. N. Y.

SEP 12 1945

AUG 30 1945

SOLD TO D'AVINO BROS

TERMS NET CASH. BILLS MUST BE PAID WEEKLY.

| REFERENCE | DATE | ARTICLES            | PRICE        | MERCHANDISE    | CARTAGE | CONTAINERS | TOTAL |
|-----------|------|---------------------|--------------|----------------|---------|------------|-------|
| WS        | 0    | 7 PEAS<br>2 LETTUCE | 3 50<br>5 29 | 24 50<br>10 58 | ✓       |            | 35 00 |

M. C. S.  
101 WALKER ST.  
NEW YORK CITY

SEP 8 1945

35.08  
107.19  
142.27

EXHIBIT 14  
U. S. Dist. Court  
S. D. N. Y.  
DEC 1945

**NOTICE:** Positively no credit for merchandise returned to us, or alterations of any  
kind will be given unless a price ticket or credit memorandum is attached  
which must be obtained from salesman authorizing same.



## GOVERNMENT'S EXHIBIT 15.

TELEPHONE WALKER'S 3483  
3494POSITIVELY NO ALLOWANCES  
Price Tickets may be obtained from salesman  
at time of purchase.

SHIPPING NO. 318

When goods are shipped and  
received for in good order  
by Transportation Company, our  
responsibility ceases and same  
are forward at purchaser's risk**WILLIAM SHAPIRO**  
*Commission Merchant*  
**FRUITS AND PRODUCE**  
364 WASHINGTON STREET  
NEW YORKEXH. 15  
U. S. Dist. Court  
S. D. of N. Y.  
SEP 12 1945

SOLD TO

D'AVINO BROS

TERMS: NET CASH. BILLS MUST BE PAID WEEKLY

SEP 10 1943

| REFERENCE | DATE | ARTICLES                 | PRICE        | MERCHANDISE    | CARTAGE | CONTAINERS | TOTAL |
|-----------|------|--------------------------|--------------|----------------|---------|------------|-------|
| WS.       | 10   | 10 PERSIANS<br>6 LETTUCE | 3 50<br>5 29 | 35 00<br>31 74 |         |            | 66 74 |

C. J.  
THE WARREN ST.  
NEW YORK CITY

SEP 10 1943

EXHIBIT 15

U. S.  
S. D.  
DEC 15**NOTICE:**Positively no credit for merchandise returned to us. No allowance of any  
kind will be given unless a price ticket or credit memorandum is attached  
which may be obtained from salesman authorizing same.



## GOVERNMENT'S EXHIBIT 16.

TELEPHONES WALKER 9-3483  
3484POSITIVELY NO ALLOWANCES  
Price Tickets may be obtained from salesman  
at time of purchase.

SHIPPING NO 315

WILLIAM SHAPIRO

Commission Merchant

FRUITS AND PRODUCE

364 WASHINGTON STREET

NEW YORK 11, N. Y.

When goods are shipped and  
accepted for in good order  
by Transportation Company, our  
responsibility ceases and same  
is forward at purchaser's risk

SEP 12 1945

SOLD TO

D'AV'NO, BROS

TERMS: NET CASH. BILLS MUST BE PAID WEEKLY

| REFERENCE | DATE | ARTICLES  | PRICE | MERCHANDISE | CARTAGE | CONTAINER | TOTAL |
|-----------|------|-----------|-------|-------------|---------|-----------|-------|
| WS        | 19   | 10 CELERY | 4 00  | 40 00       |         |           |       |
|           |      | 5 LETTUCE | 5 29  | 26 45       |         |           |       |
|           |      | 2 CAROTS  | 5 80  | 11 60       |         |           | 78 05 |

**NOTICE:**Positively no credit for merchandise returned to us, or allowance of any  
kind will be given unless a price ticket or credit memorandum is attached  
which must be obtained from salesman authorizing same.

**WILLIAM SHAPIRO**  
 COMMISSION MERCHANT  
**FRUITS AND PRODUCE**  
 WASHINGTON and NORTH MOORE STS.  
 Telephone WAbler 1-5229  
 1-5229  
 New York 100  
 To *Wakeman* *Aug 28 1943*  
*45 re*  
*14247*  
*529*  
*23805*  
 No 524-43

**WILLIAM SHAPIRO**  
 COMMISSION MERCHANT  
**FRUITS AND PRODUCE**  
 WASHINGTON and NORTH MOORE STS.  
 Telephone WAbler 1-5229  
 1-5229  
 New York 100  
 To *[Signature]* *Aug 28 1943*  
*[Signature]*  
*67*  
*14247*  
*354'43*  
 No 531-34

**WILLIAM SHAPIRO**  
 COMMISSION MERCHANT  
**FRUITS AND PRODUCE**  
 WASHINGTON and NORTH MOORE STS.  
 Telephone WAbler 1-5229  
 1-5229  
 New York 100  
 To *Mutallan Girt* *Aug 28 1943*  
*[Signature]*  
*1997*  
*1587*  
 No 552-15

DEFENDANT'S EXHIBIT E. 104  
 For Identification.



[fol. 135] IN UNITED STATES DISTRICT COURT

[Title omitted]

**MOTION FOR ARREST OF JUDGMENT**

Comes now William Shapiro the defendant in the above named cause and moves this Honorable Court in arrest of judgment for the following reasons, to wit:

First: That the counts 7, 8, 9, 10 and 11 of the above numbered Information, upon which the defendant was tried and convicted, do not state sufficient facts to constitute a crime against the United States.

Second: That upon the face of the record the defendant is not guilty of the crime charged in counts 7, 8, 9, 10 and 11 of the within Information.

Third: That the record decisively establishes that there was such a fatal variance of proof in that the defendant did not compel, demand and require the witness D'Avino, as charged in counts 7, 8, 9, 10 and 11, to purchase a plentiful commodity as a condition and integral part for the sale of a scarce commodity.

[fol. 136] Fourth: That there is no evidence, direct or inferential, that the defendant William Shapiro violated any provisions of the Emergency Price Control Act of 1942, or did anything to bring about an evasion of the price limitations covering the commodities referred to in counts 7, 8, 9, 10 and 11 of this information.

Fifth: That the uncontradicted evidence shows that the witness D'Avino admitted that he was at liberty to return any and all of the commodities which he purchased and which are referred to in counts 7, 8, 9, 10 and 11, thus nullifying any contention on the part of the Government that the witness D'Avino was compelled and required to purchase the said commodities as alleged in counts 7, 8, 9, 10 and 11.

Sixth: That the uncontradicted evidence shows that the price, charged by the defendant William Shapiro, to the witness D'Avino, for the commodities referred to in counts 7, 8, 9, 10 and 11 of the Information, were at ceiling or below the ceiling price and therefore the sale of these com-

modities in combination did not constitute an evasion of MPR #426, subdivision 11.

Wherefore, defendant prays for the arrest of judgment as to counts 7, 8, 9, 10 and 11 of the Information herein.

Dated: New York, December 19th, 1945.

Curran & Stim, Attorneys for Defendant, Office & P.  
O. Address, 29 Broadway, New York City.

[fol. 137] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR A NEW TRIAL

Comes now William Shapiro, defendant above named and moves this Honorable Court to grant him a new trial in the above cause for the following reasons, to wit:

1. That the verdict of the jury on counts numbered 7, 8, 9, 10 and 11 of the above numbered Information is contrary to the law.

2. That the verdict of the jury on counts numbered 7, 8, 9, 10 and 11 is contrary to the evidence.

3. That there was no sufficient competent evidence to support the verdict of the jury on counts numbered 7, 8, 9, 10 and 11.

4. That the Court erred in refusing to grant the prayer of the defendant to dismiss counts numbered 7, 8, 9, 10 and 11 of the Information at the close of the Government case, as well as at the end of the entire case.

[fol. 138] 5. That the Court erred in refusing to direct the jury to return a verdict of not guilty as to counts numbered 7, 8, 9, 10 and 11 upon the ground that the defendant was prejudiced in his substantial rights:

(a) By the failure of the Government to prove the regulation which is the basis of this information, to wit: MPR #426, subdivision 11.

(b) By the failure of the Government to establish that the defendant required and compelled the witness, D'Avino

to purchase certain commodities as a condition of and as an integral part of the sale to him of certain other commodities as mentioned in the said counts numbered 7, 8, 9, 10 and 11.

(c) By the failure of the Government to prove the ceiling price of the commodities mentioned in the said aforementioned counts.

(d) By the failure of the Government to prove that the sale of plentiful commodities in combination with and as a condition of the sale of the scarce commodities referred to in counts 7, 8, 9, 10 and 11 constituted an evasion of price limitations as fixed by the said MPR #426.

(e) By the failure of the Government to prove the prices which it is alleged the defendant evaded by the sale of the said aforementioned commodities.

6. That the Court erred by the failure to permit the defendant to introduce evidence of other sales made to other customers on the same day as alleged in counts 7, 8, 9, 10 [fol. 139] and 11, to establish that the scarce commodities were sold to other customers on these days without the requirement or compulsion to purchase plentiful commodities as an integral condition of same.

7. That the Court erred in refusing the defendant's offer to introduce evidence as to the custom and practice of the fresh fruit and produce industry, which, if allowed would have established that the regulation in question which is the subject matter of the said aforementioned counts was used or made to operate to compel changes in the business practices, cost practice or methods or means or aids to distribution established in the said industry without a prior affirmative finding by the Administrator that the said regulation was necessary to prevent circumvention or evasion of any regulation, order, price schedule or requirement under the provisions of the Emergency Price Control Act.

8. That the Court erred in charging the jury that the opportunity to dispose of a plentiful commodity together with a scarce commodity, constituted an advantage to the defendant and a violation of the War Emergency Price Control Act, as well as MPR #426, subdivision 11, which was the subject matter of the information.

9. That the Court erred in refusing the defendant's request to charge the jury:

(a) That a conviction cannot be had upon strong suspicion or probabilities of guilt, nor as in civil cases upon a mere preponderance of evidence, but guilt must be established beyond a reasonable doubt.

(b) That the mere refusal by the defendant to sell to any of his customers a scarce commodity or any commodity [fol. 140] is in itself no violation of the Emergency Price Control Act. Only if the sale of such scarce commodity is accompanied by coercion to purchase in combination with the sale of such scarce commodity a plentiful commodity does a violation occur.

(c) That the powers granted by Congress to the office of Price Administration by the Emergency Price Control Act were not to be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, or changes in established rental practices, except where such action is affirmatively found by the Administrator to be necessary to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.

(d) That the mere fact that any of the witnesses for the Government believed that in order to purchase a scarce commodity they would have to purchase a plentiful commodity as a condition and acted in that belief, is not sufficient to spell out a violation of the law.

(e) That the defendant, William Shapiro, is accused of having evaded the provisions of Revised Maximum Price Regulation No. 426, by demanding, making and requiring certain merchants to purchase a commodity which was plentiful at that time as a condition of the sale to these merchants, and as an integral part thereof, of another commodity which was scarce; that if the evidence fails to establish beyond a reasonable doubt that any of these merchants, in order to obtain the purchase of the scarce commodities, were required, compelled and coerced by the defendant William Shapiro, to purchase the plentiful commodities, then it is their duty to find the defendant William Shapiro, not guilty.

[fol. 141] (f) That if the jury finds from the evidence, beyond a reasonable doubt, that any of the merchants who testified were required, compelled and coerced by the said William Shapiro, to purchase plentiful commodities in order to acquire scarce commodities, then it is their duty to inquire further whether the said requirement and compulsion resulted in the payment by any of these merchants of a price in excess of the maximum price permitted to be charged under the Price Control Regulations for any of these commodities; that unless they find beyond a reasonable doubt that as a result of said requirement and compulsion the merchants who testified, or any of them paid and the defendant William Shapiro received for the said commodities a price in excess of the said maximum price, it is their duty to find the defendant not guilty.

(g) That if the jury finds that a witness testified falsely to any material fact, they have a right to disregard that part of the testimony which they find to be untrue and accept the balance of the testimony that they believe, or they have the right in such a situation to disregard all of the testimony of such a witness, irrespective of whether or not they believe some part or parts of it.

Wherefore, the defendant William Shapiro prays that the Court set aside the verdict of the jury as to counts 7, 8, 9, 10 and 11 and grant the defendant a new trial.

Dated: N. Y., December 19th, 1945.

Curran & Stim, Attorneys for Defendant, Office &  
P. O. Address, 29 Broadway, New York City.

[fol. 142] IN UNITED STATES DISTRICT COURT

C. 119-147

UNITED STATES OF AMERICA,

VS.

WILLIAM SHAPIRO

OPINION OF FORD, J., DENYING MOTIONS IN ARREST OF JUDGMENT AND FOR A NEW TRIAL

New York, January 2, 1946;

10:00 a. m.

Before:—Hon. H. Church Ford, District Judge.

Present:—Thomas F. Burchill, Jr., Esq., Assistant U. S. Attorney.

Menahem Stim, Esq., for Defendant.

(Statement by Mr. Stim on behalf of the defendant.)

(Statement by Mr. Burchill on behalf of the Government.)

The Court: I have read your briefs, with much interest, both your arguments as well as your citations.

I have received a copy of the recent opinion of Judge Simons of the Sixth Circuit. Of course, I recognize that a decision of the Sixth Circuit is binding only in the Sixth Circuit, but it is an interesting and persuasive commentary on the meaning of that rather strange provision of [fol. 143] the amendment of 1944, which provided that agencies or officers of the Government exercising supervisory or policy-making authority over the Office of Price Administration shall not be subject to the provisions of the Federal Register Act other than the requirement to publish their orders or regulations. Judge Simons' interpretation is that the exception refers to those supervisory powers above and over the Administrator of the OPA. I don't know whether he has correctly interpreted the intention of Congress or not. I am familiar with his work in the Sixth Circuit and I would be inclined to agree with him if we were limited to that basis for determining this motion. You gentlemen have proceeded upon the idea that

judicial notice of these requirements is entirely dependent on the operative effect of the Federal Register Act. As a matter of fact, gentlemen, judicial notice of such regulations was taken by the courts years before there was any such thing as a Federal Register Act—not these particular regulations, because these regulations were not in effect, but regulations of a similar nature. It has been established law for almost a century, as pointed out in the old case of *Caha v. United States*, with which you are familiar, 152 U. S. 211, 221, 1894. The Court said in that case:

“Questions of a kindred nature have been frequently presented, and it may be laid down as a general rule, deducible from the cases, that wherever, by the express language of any act of Congress, power is entrusted to either of the principal departments of government to prescribe rules and regulations for the transaction of business in which the public is interested, [fol. 144] and in respect to which they have a right to participate, and by which they are to be controlled, the rules and regulations prescribed in pursuance of such authority become a mass of that body of public records of which the courts take judicial notice.”

The distinguished justice who wrote that opinion in the *Caha* case cited a number of cases, all of which I have examined. Some are squarely in point, some seem a little difficult to find how they were in point, but taking the *Caha* case back in 1894, referring back to those old cases beginning in 1859 and since that time, the rule has been universally followed that regulations authorized by Congress became part of the law of the country to be followed by the Courts.

Later came this case of *Thornton v. United States*, 271 U. S. 414, in which the Secretary of Agriculture had prescribed certain rules and regulations with regard to the quarantining of diseased animals. Certain regulations required inspection and certain particular methods of disinfecting them, dipping animals. The regulations were as detailed as any you could imagine. The Supreme Court made this statement:

“Under date of June 15, 1916, various regulations were issued by the Secretary of Agriculture. They

are not printed in the record, they are matters of which we may take judicial notice,"

citing *Caha v. United States* as authority.

I notice a rather interesting commentary on the same subject by the Second Circuit in the famous *Schechter* case. You remember the *Schechter* case involved rules and regulations [fol. 145] that were part of the Code of the City. The opinion of the Second Circuit Court of Appeals makes this statement—the case did not go up to the Supreme Court on that point, it went on another point—the authority to delegate such unlimited powers to the executive without appropriate standards by which they should be controlled, but this is what the Circuit Court said in regard to judicial notice of these regulations:

"Error is assigned for the refusal to sustain the demurrer to counts 4, 5, and 60 because ordinances and regulations of the City of New York therein referred to were not pleaded. Section 22 of the Code prohibits the sale of live poultry which has not been inspected and approved in accordance with the rules, regulations or ordinances of the particular area. These counts deal with this subject without reference to the particular provisions of the City ordinances. Judicial notice may be taken of these provisions by the court,"

citing a number of cases.

"The Poultry Code which will be judicially noticed by this court. (*Thornton v. United States*) contemplates inspection in accordance with the Sanitary Code (Sec. 22). Since judicial notice is taken, it was unnecessary to plead such laws."

That was the commentary of the Second Circuit before we had any Federal Register Act.

In *Sommer v. E. B. Kelly Company*, 47 N. Y. S. (2d) 57, the Court said:

[fol. 146] "The said Act, the rulings and the ceiling prices fixed pursuant to its provisions constitute the law. The Court will take judicial notice of said law."

In *United States v. Lederer*, 140 Fed (2d) 136, to which reference has been made and which Mr. Stim commented

upon as being prior to the passage of the amendment to the Federal Register Act, Judge Evans in commenting upon the established law prior to the Federal Register Act, and after quoting the Federal Act, stated:

"Aside from this statutory provision the rule seems to be well settled as stated in 20 American Jurisprudence, 67, 68:

"The courts also take judicial notice of the official acts of the heads of the executive departments of the Federal Government of public notoriety or general public interest, but not of departmental acts having no such character."

"As to judicial notice by courts of regulations of the Government, even though not specifically introduced in proof,"

citing many cases.

So it seems to me, gentlemen, we are not dependent upon the Federal Register Act for the authority to take judicial notice of these regulations, whatever may be our view as to the Sixth Circuit Court's opinion, with which, however, I am in full accord.

I call your attention to the case of *United States v. Fried*, 149 Fed. (2d) 1011, which was decided by the Second Circuit on June 21, 1945, in which your Circuit considered an OPA regulation.

[fol.147] The Court said:

"The regulations do not so provide."

Then, after pointing out what the regulations were, the Court said:

"Since the court could take notice of the regulations, the proof, as finally made, was competent and complete, \* \* \*"

Whatever may be the interpretation of the Federal Register Act, my opinion is that it merely broadens the scope of judicial notice. Prior to the Federal Register Act, judicial notice was confined to executive proclamations, rules and regulations which were of general public interest, but did not reach to inter-departmental regulations. 0

The Federal Register Act goes further than that,—anything lawfully published in the Register, whatever it may be, is open to judicial notice.

Judicial notice of the regulations that are involved here has been the established law, it seems to me, for many, many years, and is still the law. I think, therefore, I shall have to overrule the motion for a new trial. Prepare your order accordingly.

Mr. Stim: May I have an exception.

The Court: Surely.

[fol. 148] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION FOR NEW TRIAL—January 2, 1946

A motion having come on to be heard before me for a new trial in the above entitled action now after hearing Curran and Stim, Menahem Stim, of counsel, attorney for said defendant in favor of said motion, and John F. X. McGohey, United States Attorney for the Southern District of New York, Thomas F. Burchill, Jr., Assisant United States Attorney of counsel in opposition thereto.

Upon motion of John F. X. McGohey, United States Attorney, it is

[fol. 149] Ordered that said motion is hereby denied, and it is

Further Ordered that the sentence imposed which is a total fine of \$5,000 be paid on or before January 7, 1946.

H. Church Ford, United States District Judge.

## IN UNITED STATES DISTRICT COURT

[Title omitted]

## NOTICE OF APPEAL

The name and address of the appellant is as follows:

William Shapiro, whose business address is 364 Washington Street, New York, N. Y., and whose home address is 3599 Bedford Avenue, Brooklyn, New York.

The attorneys for the appellant are Curran & Stim, Esqs., Menahem Stim, Esq., of Counsel, 29 Broadway, New York, N. Y.

[fol. 150] The defendant-appellant was charged on forty-eight separate counts of the Information with having violated on forty-eight separate dates, Title 50 Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders adopted and issued thereunder, and more particularly, Maximum Price Regulation No. 426. The full particulars of the several counts in the Information are referred to in the original Information now on file in the office of the Clerk of this Court.

The Information herein was returned during the December 1944 Term of this Court. The case was tried before Hon. H. Church Ford, District Judge, and a jury, and the verdict of guilty on Counts 7-8-9-10 and 11 of the Information was rendered on December 18th, 1945. Sentence was imposed by the District Judge on December 18th, 1945, as follows:

One thousand (\$1,000.00) Dollars fine on each of the five counts in the Information on which a verdict of guilty was rendered, making a total fine in the sum of Five thousand (\$5,000.00) Dollars.

On the 19th day of December, 1945, the defendant-appellant made a due and timely motion for a new trial before the United States District Court setting forth numerous grounds in support of the motion. On January 2nd, 1946 the Honorable H. Church Ford rendered his decision denying the motion and an order denying the motion was entered and filed in the office of the Clerk of this Court on January 3rd, 1946.

I, the undersigned, William Shapiro, the above named appellant, do hereby appeal to the United States Circuit

Court of Appeals, for the Second Circuit, from the judgment entered in this Court on December 18th, 1945, and from the order denying the defendant-appellant's motion for a new [fol. 151] trial entered in this Court on the 3rd day of January, 1946.

### Grounds of Appeal

- (1) That the Court has no jurisdiction over the defendant.
- (2) That the violation referred to in each of the counts of the Information herein could not be charged in an Information, and that the said charges could only be submitted to a Grand Jury duly constituted as provided by the Constitution of the United States.
- (3) That each of the counts in the Information herein, and particularly counts 7-8-9-10 and 11, did not state an offense under Title 50, Appendix, Section 901 *et seq.*, United States Code, and the rules, regulations and orders adopted and issued thereunder, and particularly did not state an offense under Maximum Price Regulation No. 426;
- (4) That the Government did not prove the material allegations in each of the counts 7-8-9-10 and 11 of the Information herein necessary to sustain a conviction beyond a reasonable doubt;
- (5) That there was no sufficient competent evidence to support the verdict of the jury on counts numbered 7-8-9-10 and 11;
- (6) That the evidence adduced upon the trial did not establish that the defendant participated in a tying agreement within the purview of the prohibition contained in Maximum Price Regulation No. 426;
- [fol. 152] (7) That the Court erred in receiving certain testimony over the objection of the defendant;
- (8) That the verdict of the jury on counts numbered 7-8-9-10 and 11 of the above numbered Information is contrary to the law;
- (9) That the verdict of the jury on counts numbered 7-8-9-10 and 11 is contrary to the evidence;
- (10) That there was no credible evidence to prove any criminal intent or any intent to violate the statute under the Information so filed, and that therefore the District

Judge erred in submitting the case to the jury and in not either dismissing all of the several counts of the Information submitted to the jury, or directing the jury to bring in a verdict of acquittal;

(11) That the Court erred in refusing to direct the jury to return a verdict of not guilty as to the counts numbered 7-8-9-10 and 11 upon the ground that the defendant was prejudiced in his substantial rights;

(a) By the failure of the Government to prove the regulation which is the basis of this information, to wit: MPR #426, subdivision 11;

(b) By the failure of the Government to establish that the defendant required and compelled the witness, D'Avino to purchase certain commodities as a condition of and as an integral part of the sale to him of certain other commodities as mentioned in the said counts numbered 7, 8, 9, 10, and 11;

[fol. 153] (c) By the failure of the Government to prove the ceiling price of the commodities mentioned in the said aforementioned counts;

(d) By the failure of the Government to prove that the sale of plentiful commodities in combination with and as a condition of the sale of scarce commodities referred to in counts 7-8-9-10 and 11 constituted an evasion of price limitations as fixed by the said MPR #426;

(e) By failure of the Government to prove the prices which it is alleged the defendant evaded by the sale of the said aforementioned commodities;

(f) By the failure of the Government to prove that regulation MPR #426, as well as the regulations fixing ceiling prices of the commodities mentioned in counts 7-8-9-10 and 11, were approved by the Secretary of Agriculture as required by Section 903, subdivisions (e) and (f) of the Emergency Price Control Act;

12. That the defendant having claimed immunity under the provisions of the Emergency Price Control Act of January 30, 1942, and particularly United States Code, title 50, section 922, as well as under the Compulsory Testimony Act of February 11, 1893 (United States Code 1934, title 49,

section 46) and under the Constitution of the United States, when subpoenaed on or about October 4th, 1944 by the Enforcement Attorney of the Office of Price Administration to produce his books and records containing information, and give testimony concerning transactions later charged in the Information, and the defendant having been compelled to produce the aforesaid books and records, notwithstanding [fol. 154] ing his claim of immunity as aforesaid, the Court erred in refusing to grant the motion of the defendant to dismiss the Information at the close of the Government's case, as well as at the end of the entire case, on the ground that the defendant having affirmatively claimed immunity, acquired immunity under the aforesaid statutes.

13. That the Court erred in refusing the defendant's offer to introduce evidence as to the custom and practice of the fresh fruit and produce industry, which, if allowed would have established that the regulation in question which is the subject matter of the said aforementioned counts was used or made to operate to compel changes in the business practices, cost practice or methods or means or aids to distribution established in the said industry without a prior affirmative finding by the Administrator that the said regulation was necessary to prevent circumvention or evasion of any regulation, order, price schedule or requirement under the provisions of the Emergency Price Control Act.

14. That the Court erred in charging the jury that the opportunity to dispose of a plentiful commodity together with a scarce commodity, constituted an advantage to the defendant and a violation of the War Emergency Price Control Act, as well as MPR # 426, subdivision 11, which was the subject matter of the information.

15. That the Court erred in refusing the defendant's request to charge the jury:

(a) That a conviction cannot be had upon strong suspicion or probabilities of guilt, nor as in civil cases upon [fol. 155] a mere preponderance of evidence, but guilt must be established beyond a reasonable doubt;

b) That the mere refusal by the defendant to sell to any of his customers a scarce commodity or any commodity is in itself no violation of the Emergency Price

Control Act. Only if the sale of such scarce commodity is accompanied by coercion to purchase in combination with the sale of such scarce commodity a plentiful commodity does a violation occur;

(c) That the powers granted by Congress to the office of Price Administration by the Emergency Price Control Act were not to be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, or changes in established rental practices, except where such action is affirmatively found by the Administrator to be necessary to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act;

(d) That the mere fact that any of the witnesses for the Government believed that in order to purchase a scarce commodity they would have to purchase a plentiful commodity as a condition and acted in that belief, is not sufficient to spell out a violation of the law.

(e) That the defendant, William Shapiro, is accused of having evaded the provisions of Revised Maximum Price Regulation No. 426, by demanding, making and requiring certain merchants to purchase a commodity which was plentiful at that time as a condition of the sale to these merchants, and as an integral part thereof, of another [fol. 156] commodity which was scarce; that if the evidence fails to establish beyond a reasonable doubt that any of these merchants, in order to obtain the purchase of the scarce commodities, were required, compelled and coerced by the defendant William Shapiro, to purchase the plentiful commodities, then it is their duty to find the defendant William Shapiro, not guilty;

(f) That if the jury finds from the evidence, beyond a reasonable doubt, that any of the merchants who testified were required, compelled and coerced by the said William Shapiro, to purchase plentiful commodities in order to acquire scarce commodities, then it is their duty to inquire further whether the said requirement and compulsion resulted in the payment by any of these merchants of a price in excess of the maximum price permitted to be charged under the Price Control Regulations for any of these commodities; that unless they find beyond a reason-

able doubt that as a result of said requirement and compulsion the merchants who testified, or any of them paid and the defendant William Shapiro received for the said commodities a price in excess of the said maximum price, it is their duty to find the defendant not guilty;

(g) That if the jury finds that a witness testified falsely to any material fact, they have a right to disregard that part of the testimony which they find to be untrue and accept the balance of the testimony that they believe, or they have the right in such a situation to disregard all of the testimony of such a witness, irrespective of whether or not they believe some part or parts of it.

[fol 157] 16. That the District Judge erred in overruling defendant's motion to set aside the verdict of the jury.

17. That the District Judge erred in denying the motion for a new trial.

Dated, New York, January 4th, 1946.

William Shapiro, Appellant.

[fol. 158] IN UNITED STATES DISTRICT COURT

#### STIPULATION SETTLING BILL OF EXCEPTIONS

\*It is hereby stipulated by and between the attorneys for the respective parties herein that the foregoing bill of exceptions contains all the evidence, exhibits and proceedings had upon the trial of this action, as agreed upon by the parties, and that the same may be settled and ordered filed.

Dated: New York City, September 12, 1946.

Curran & Stim, Attorneys for Defendant-Appellant. John F. X. McGohey, United States Attorney, Attorney for Appellee.

IN UNITED STATES DISTRICT COURT

#### ORDER SETTLING BILL OF EXCEPTIONS

On the foregoing stipulation, the foregoing bill of exceptions containing all of the evidence, exhibits and proceedings had upon the trial of this action, as agreed upon by and

between the parties, is hereby settled and ordered on file in the office of the Clerk of the District Court of the United States in and for the Southern District of New York.

Dated: New York City, September 16, 1946.

J. Waties Waring, U. S. D. J.

[fol. 159] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO RECORD

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated: New York City, September 12, 1946.

Curran & Stim, Attorneys for Defendant-Appellant.  
John F. X. McGohey, United States Attorney for  
the Southern District of New York, Attorney for  
Appellee.

IN UNITED STATES DISTRICT COURT

ORDER FILING RECORD

On the consent of the attorneys for the respective parties, the foregoing printed record is hereby ordered filed in lieu of the original record for the purpose of certifying the record on appeal.

Dated: New York City, September 16, 1946.

J. Waties Waring, U. S. D. J.

[fol. 160] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 161] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE SECOND CIRCUIT, OCTOBER TERM, 1946

No. 93

(Argued December 11, 1946. Decided February 7, 1947)

Docket No. 20366

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

WILLIAM SHAPIRO, Defendant-Appellant.

Before Swan, Augustus N. Hand and Clark, Circuit Judges  
Appeal from the District Court of the United States for the  
Southern District of New York

William Shapiro was convicted of violating maximum price regulations established under the Emergency Price Control Act of 1942, 50 U. S. C. A. App. § 901 *et seq.*, and he appeals. Affirmed.

[fol. 162] Menaheim Stim, of New York City (Curran & Stim, of New York City, on the brief), for defendant-appellant.

John J. Donovan, Jr., Asst. U. S. Atty., of New York City (John F. X. McGohey, U. S. Atty., of New York City, on the brief), for plaintiff-appellee.

OPINION

CLARK, Circuit Judge:

Defendant, a wholesaler of fruit and produce, was convicted of violating price control regulations by requiring a customer to purchase other produce along with lettuce. On this appeal he contests a conviction absent proof of violation of ceiling prices; but we have held proof of a tie-in sale alone sufficient to convict under this self-same regulation. *United States v. George F. Fish, Inc.*, 2 Cir., 154 F. 2d 798, certiorari denied *George F. Fish, Inc. v. United States*, 66 S. Ct. 1377. Certain other assigned errors can be summarily dismissed. The regulation was duly pub-

lished in the Federal Register;<sup>1</sup> and in any event the court properly took judicial notice of it without formal proof. *Caha v. United States*, 152 U. S. 211, 221, 222; *Thornton v. United States*, 271 U. S. 414, 420. Defendant's offer to prove that on occasions other than those charged he sold lettuce without tie-in with other vegetables was properly rejected, as the evidence was irrelevant. 1 Wigmore on [fol. 163] Evidence, 3d Ed. 1940, § 195, pp. 665, 666; *State v. Ferguson*, 71 Conn. 227, 41 A. 769. And the evidence of the customer D'Avino of the five tie-in sales to him was sufficient to justify the jury's verdict, even against his own denials. This leaves as the substantial and important question defendant's claim that the prosecution violates his constitutional and statutory immunity because the leads from which it developed were obtained from his books, produced by him in obedience to a subpoena issued by the Price Control Administrator.

The subpoena of the Administrator had required defendant to produce his sales records for September, 1944, at the local price control office. The Administrator, by a previous valid regulation, § 14 of Art. 2 of § 1439 of MPR 426, had required such records to be kept by persons of defendant's trade status. When defendant appeared with his books he asked what immunity he would receive and was told he would be given whatever immunity flowed as a matter of law from the production of the books. He then made formal claim for constitutional and statutory immunity, and handed over the books. Obtaining the names of customers from these books the price control officials discovered through investigation that D'Avino was prepared to testify as to tie-in sales as of an earlier period, namely, August, September, and November, 1943.

Defendant bases his claim to immunity on the Fifth Amendment and on § 202(g) of the Emergency Price Control Act, 50 U. S. C. A. App. § 922(g), which is as follows: "No person shall be excused from complying with any requirements under this section because of his privilege

<sup>1</sup> As originally issued in 1943, MPR 426 was published in 8 F. R. 9546, 10571; it was frequently amended in details, all likewise published as *cf.* Amt. 193, Oct. 1, 1946, in 11 F. R. 11199, and earlier references thereto and in 32 CFR, 1943 Supp. 1535, 1944 Supp. 2821, 1945 Supp. 3413.

against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with [fol. 164] respect to any individual who specifically claims such privilege."<sup>2</sup> The Compulsory Testimony<sup>6</sup> Act provides in substance that no person shall be excused from testifying or producing books in response to a subpoena or otherwise in proceedings before the Interstate Commerce Commission or for violation of the Interstate Commerce Act on the ground that the evidence, documentary or otherwise, "may tend to criminate him or subject him to a penalty or forfeiture"; but he shall not be prosecuted or subjected to any penalty or forfeiture "on account of any transaction . . . concerning which he may testify, or produce evidence" in response to subpoena or otherwise. 49 U. S. C. A. § 46.

It was settled by *Wilson v. United States*, 221 U. S. 361, Ann. Cas. 1912D, 558, that the constitutional immunity does not attach to records required by law, for these are public documents. But defendant says that even if the distinction is drawn between required and voluntary records in the cases arising under the fifth Amendment, no such distinction is warranted under the terms of the presently applicable statute. For that grants immunity for compliance "with any requirements under this section," that is, with all requirements of the lengthy section, including subsection (b), which is the Administrator's grant of authority for requiring the keeping of the records in question. He urges that this shows a congressional intent to extend immunity to the production of required as well as nonrequired records. [fol. 165] For otherwise the Administrator would have

<sup>2</sup> Many regulatory statutes confer broad record-requiring powers upon administrative agencies and contain immunity clauses similar to this one. Among these are Securities Exchange Act of 1934, 15 U. S. C. A. §§ 78q, 78u(d); National Labor Relations Act, 29 U. S. C. A. §§ 156, 161; Public Utility Holding Company Act of 1935, 15 U. S. C. A. §§ 79o(c), 79r(c), 79r(e); Federal Power Act, 16 U. S. C. A. §§ 825a, 825f(g); Civil Aeronautics Act of 1938, 49 U. S. C. A. §§ 425(a), 644; Fair Labor Standards Act of 1938, 29 U. S. C. A. §§ 209, 211, 49 U. S. C. A. §§ 49, 50; Second War Powers Act of 1942, 50 U. S. C. A. App. §§ 633(3), 633(4).

the power to render the immunity provision quite inoperative and meaningless by merely imposing broad record-keeping requirements on the businesses within his field of operations. Moreover, as he urges, the statute is constitutional only if it affords a protection as broad as that of the Fifth Amendment, *Counselman v. Hitchcock*, 142 U. S. 547; *Brown v. Walker*, 161 U. S. 591; *Glickstein v. United States*, 222 U. S. 139, which will not be the case if its coverage is dependent only on the will of the Administrator.

We have reached an opposite conclusion, however, by an examination of the settled construction of the constitutional privilege against self-incrimination and of the congressional intent granting broad record-requiring powers to the Price Administrator. The principle that the constitutional privilege against self-incrimination protects individuals against being forced to produce private documents for inspection, but not against being forced to produce public documents, is quite clear. *Rodgers v. United States*, 6 Cir., 138 F. 2d 992, 995, 996. "The principle applies not only to public documents in public offices, but also to records required by the law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation, and the enforcement of restrictions validly established." *Wilson v. United States*, *supra*, 221 U. S. 361, 380. Since the books here involved were such public documents, defendant had no constitutional privilege. Hence he gained statutory immunity only if statutory immunity is construed as being broader than constitutional privilege.

But the Compulsory Testimony Act, alone or, as here, incorporated in the Price Control Act, may not be so construed. The United States Supreme Court, speaking through Mr. Justice Holmes, has said: "But the obvious [fol. 166] purpose of the statute is to make evidence available and compulsory that otherwise could not be got. We see no reason for supposing that the act offered a gratuity to crime. It should be construed, so far as its words fairly allow the construction, as coterminous with what otherwise would have been the privilege of the person concerned." *Heike v. United States*, 227 U. S. 131, 142. See also Grubb, *J.'s* opinion in *United States v. Skinner*, D. C. S. D. N. Y., 218 F. 870, 876. Therefore, if the witness has, as in this case, no constitutional privilege to relinquish, he gains no

immunity under the statute. By importing the Compulsory Testimony Act, with its settled judicial construction, into the Price Control Act, Congress indicated its intention to grant in that Act an immunity similarly limited. *Amato v. Porter*, 10 Cir., 157 F. 2d 719.<sup>3</sup>

To hold that the statutory immunity attaches only to private documents, and not to public documents, does not destroy the immunity clause of the Act. The immunity clause will apply to oral testimony given in hearings and investigations conducted by the Administrator. *Bowles v. Trowbridge*, D. C. N. D. Cal., 60 F. Supp. 48; *United States v. Armour & Co.*, D. C. E. D. Pa., 64 F. Supp. 855. It will apply furthermore to documents the Administrator has subpoenaed, but which he had not required to be kept. In [fol. 167] deed, to hold that the statutory immunity attaches to public documents would greatly decrease the utility of statutory provisions authorizing administrative agencies to require the keeping of records. The purpose of such authorizations is to aid administrative agencies in the investigation and prosecution of violators of the statutes entrusted to them for enforcement by making available to the agencies a body of public documents covering transactions under their jurisdiction.

But there is an even more compelling reason for thus construing the statute. It has now been made clear by authoritative rulings that the administrative agencies have no power to secure the documents, even though required

<sup>3</sup> All the decisions to date but one have refused immunity to the production of required records under the price control regulations, usually discussing only the constitutional immunity, without separate reference to the statute. *Amato v. Porter*, 10 Cir., 157 F. 2d 719; *Bowles v. Glick Bros. Lumber Co.*, 9 Cir., 146 F. 2d 566, 571, reversing *Brown v. Glick Bros. Lumber Co.*, D. C. S. D. Cal., 52 F. Supp. 913, certiorari denied 325 U. S. 877; *Bowles v. Stitzinger*, D. C. W. D. Pa., 59 F. Supp. 94; *Bowles v. Kirk*, D. C. W. D. Pa., 59 F. Supp. 97; *United States v. Kempe*, D. C. N. D. Iowa, 59 F. Supp. 905; *Bowles v. Chew*, D. C. N. D. Cal., 53 F. Supp. 787. Of the cases which have also construed the statute, *Bowles v. Seitz*, D. C. W. D. Tenn., 62 F. Supp. 773, and *Bowles v. Misle*, D. C. Neb., 64 F. Supp. 835, are in accord with the views expressed here. *In re Hoffman*, D. C. D. C., 68 F. Supp. 53, is contra.

by law, through the process of a general search and seizure of a custodian's premises, but may obtain them only, if consent is not given, by a subpoena. This was so held in *Bowles v. Beatrice Creamery Co.*, 10 Cir., 146 F. 2d 774, which was cited and followed in both Judge L. Hand's and Judge Frank's opinions in *United States v. Davis*, 2 Cir., 151 F. 2d 140; and these views, in turn, were approved by Mr. Justice Frankfurter for the dissenting justices in *Davis v. United States*, 66 S. Ct. 1256, and were not questioned by the majority. Indeed, the subpoena is the only remedy stated in the statute itself, §§202(b) and (c). Hence here the price officials were taking the statutory course, and the only legal course, against a refusal or the qualified refusal represented by the claim of immunity. To hold that the power to subpoena is subject to a grant of immunity from prosecution would thus destroy the only sure method by which the agencies may inspect the recorded in their enforcement duties. Such a holding would destroy the value of record-keeping requirements—which are unquestionably valid, *United States v. Sullivan*, 274 U. S. 259—by making their use dependent upon the waiver by suspected wrong-[fol. 168] doers of the privilege against self-incrimination. We cannot ascribe to Congress so capricious a grant of an important regulatory power.

Since this disposes of the appeal, we need not consider the further contention by the prosecution that, in any event, no immunity attaches to the production of the books by the defendant here because the connection between the books and the evidence produced at the trial was too tenuous to justify the claim..

Affirmed..

[fol. 169] IN UNITED STATES CIRCUIT COURT OF APPEALS,  
SECOND CIRCUIT

UNITED STATES, Plaintiff-Appellee,

v.

WILLIAM SHAPIRO, Defendant-Appellant

JUDGMENT—Filed February 7, 1947

Appeal from the District Court of the United States for the  
Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 170] (File endorsement omitted.)

[fol. 171] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 172] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 2, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 51, 962. U. S. Circuit Court of Appeals, Second Circuit. Term No. 1098. William Shapiro, Petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed March 5, 1947. Term No. 1098 O. T. 1946.

